

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF OHIO  
3 EASTERN DIVISION

5 Nicole Poston,

6 Plaintiff;

7

vs.

Case No. 5:16-cv-03013-SL

8 Massillon City Schools,

9 Defendant.

10

— — — —

11 Deposition of NICOLE M. POSTON, the Plaintiff herein,  
12 taken by the Defendant upon adverse party examination  
13 before Mary Lou Mellinger, a Notary Public within and  
14 for the State of Ohio, at the Massillon City Schools  
15 Administration Building, 930 17th Street NE, Massillon,  
16 Ohio, commencing at 10:10 A.M., Thursday, October 26, 2017,  
17 pursuant to notice and stipulations of counsel.

18

19

20

21

22

23

24

25 Job Number: 428549

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5 On behalf of the Plaintiff;  
6

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11 On behalf of the Defendant.  
12

13 - - - -

14 ALSO PRESENT:

15 Mark Fortner, Assistant Principal

16 - - - -

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1                   NICOLE M. POSTON, of lawful age, the  
2                   Plaintiff herein, called by the Defendant  
3                   for the purpose of adverse party examination,  
4                   as provided by the Rules of Civil Procedure  
5                   for the District Courts of the United States,  
6                   being by me first duly sworn, as hereinafter  
7                   certified, deposed and said as follows:  
8                   - - - - -  
9                   EXAMINATION OF

10                  NICOLE M. POSTON

11                  BY MS. MASSEY:

12   Q   Good morning, Ms. Poston. As you know, my name is  
13                 Sherrie Massey. Today I'm going to be taking your  
14                 deposition and asking you some questions.

15                  For the record, please state your full name and  
16                  spell your last name.

17   A   Nicole Marie Poston, P-o-s-t-o-n.

18   Q   Okay. I'm going to go over a few rules with you for  
19                 purposes of today's deposition.

20   A   Okay.

21   Q   As you see, there's a court reporter here. She's  
22                 going to take down everything that we say during the  
23                 deposition unless we decide to go off the record. So  
24                 you need to say words. It's very hard for her to  
25                 transcribe you nodding or saying "um-um" or "uh-uh,"

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1 it ends up coming out the same. So if I ask you a  
2 question, say yes or no.

3 I'll be asking a series of questions. It's only  
4 fair that you understand what I ask you. If I ask  
5 you something and you don't understand what I'm  
6 asking you, just let me know, and I'll rephrase the  
7 question. Otherwise, I will take it that you  
8 understood the question and that's what will appear  
9 in the record.

10 If you need to take a break at any time, just  
11 let me know. This is not intended to be a marathon  
12 or to test your endurance. I will just say if there  
13 is a question pending, please answer the question  
14 before we take a break.

15 Now, it's difficult for the court reporter to  
16 take down everything if we're talking at the same  
17 time. So I would just ask that if I ask you a  
18 question, you allow me to finish asking the question,  
19 and once you answer, I'll allow you to finish  
20 answering your question, so that she doesn't have to  
21 transcribe both of us talking at the same time.

22 Now, after we complete the deposition, the court  
23 reporter will prepare a written transcript. Your  
24 attorney will instruct you on whether you will read  
25 it and you will have an opportunity to correct any

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1           errors. If you do change the substance of some of  
2           your answers, I will have the opportunity to bring  
3           you back if I have additional questions.

4           Now, your attorney from time to time throughout  
5           the deposition may object. We're trying to preserve  
6           the record for purposes of if something -- you know,  
7           we need to bring up something to the judge at some  
8           point. So the objections are for the record and will  
9           be ruled upon later. If your attorney objects, you  
10          should nevertheless answer unless she specifically  
11          instructs you not to do so.

12          Do you have any questions for me before we  
13          begin?

14       A      No.

15       Q      Okay. Now, if you could tell me where you currently  
16          reside?

17       A      In Canton.

18       Q      Okay. And how long have you resided in Canton?

19       A      Thirty years, approximately.

20       Q      Okay.

21       A      Thirty years.

22       Q      Now, have you been deposed before?

23       A      No.

24       Q      Okay. Have you had to testify at a hearing or a  
25          trial before?

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1 A No.

2 Q Okay. And did you speak to anyone regarding this  
3 deposition, other than your attorney? I don't want  
4 to know what you talked to your attorney about. Did  
5 you speak with anyone else in preparation for your  
6 deposition?

7 A No.

8 Q Did you review any documents in preparation for your  
9 deposition?

10 A No.

11 Q Okay. Now, I'm just going to go over a few things in  
12 terms of your background. Where did you attend high  
13 school?

14 A Jackson High School.

15 Q Okay. And where did you attend college, starting  
16 with where you went for undergraduate school?

17 A My undergraduate was done at Kent State University.

18 Q Okay. And what degree did you obtain from Kent  
19 State?

20 A Mild-moderate intervention specialist.

21 Q Okay.

22 A And then my Master's Degree was through the  
23 University of Michigan.

24 Q Okay. What did you get your Master's Degree in?

25 A It was a Master's in education with special education

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1 being the emphasis.

2 Q **And when did you obtain your degree from Kent State?**

3 A December of 2001.

4 Q **And when did you obtain your degree from the  
5 University of Michigan?**

6 A I'm not sure.

7 Q Okay. Other than Kent State University and the  
8 University of Michigan, have you taken classes at any  
9 other colleges or universities?

10 A Yes.

11 Q **Okay. And where did you attend school?**

12 A I don't remember the name of it. It was through a --  
13 there's a party that I take the classes through and  
14 then they go through a university, I think it was --  
15 it was a small university in Michigan, but I don't  
16 remember the name of it.

17 Q **And what type of coursework did you take?**

18 A It's just continuing professional development that we  
19 have to get so many credit hours for to renew our  
20 license, teaching license. Advancement Courses is  
21 the entity that I take it through, and then they  
22 partner with universities to just give you the  
23 credits for it.

24 Q **When did you first obtain your teaching certificate  
25 or license?**

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1 A That would have been once I graduated.

2 Q Okay. So in 2001, after you graduated?

3 A Yeah. Probably it might have been technically 2002,  
4 because I graduated in December of 2001.

5 Q Okay. And in what area did you obtain your licensure  
6 or certification?

7 A Intervention specialist.

8 Q Have you possessed any other teaching certifications  
9 or licenses from ODE, other than intervention  
10 specialist?

11 A No.

12 Q And did you work for any school districts prior to  
13 coming to Massillon?

14 A Can I ask for a clarification?

15 Q Yes.

16 A Are you speaking as a teacher, or just as an  
17 employee?

18 Q Well, let's start off first just as an employee, did  
19 you work for any school districts?

20 A Yes.

21 Q Where did you work?

22 A Green Local Schools.

23 Q And what position did you hold in Green Local?

24 A Teacher's aide.

25 Q And how long did you serve in that position?

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1 A I did two summers, extended school year, their  
2 extended school year services. So it was the summer  
3 of, I believe the summer of 2000 and 2001, I believe.  
4 It was prior to me completing my undergrad.

5 Q Okay. Now, did you do something separate in terms of  
6 student teaching with the school district while you  
7 were getting your undergraduate degree?

8 A I did my student teaching in the fall of 2001, and it  
9 was with North Canton City Schools.

10 Q Now, when did you first start working for Massillon?

11 A August of 2002.

12 Q And what position did you first obtain when you  
13 started working with Massillon?

14 A Small group teacher.

15 Q Have you had any breaks in employment, any long  
16 leaves of absence or anything like that since you've  
17 been employed with Massillon?

18 A No.

19 Q Have you ever had any job, outside job concurrent  
20 with your employment here at Massillon?

21 A No.

22 Q Any volunteer jobs or anything like that?

23 A Yes, I did volunteer.

24 Q And what type of volunteer work do you do?

25 A Currently?

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1 Q Yes. Do you currently do any volunteer work?

2 A I do volunteer work through SNAP.

3 Q And what is SNAP?

4 A It's a -- they do low cost spay and neuter for cats  
5 and dogs.

6 Q And how long have you volunteered with them, with  
7 SNAP?

8 A I'm not sure.

9 Q Any other current volunteer work other than SNAP?

10 A I belong to a local chapter of the American Council  
11 for the Blind.

12 Q And what type of volunteer work do you do with the  
13 local chapter of the American Council for the Blind?

14 A I'm the treasurer.

15 Q And how long have you served in that capacity?

16 A Eight years, maybe.

17 Q You said you were initially hired as a small group  
18 instructor. When you first started at Massillon,  
19 which building -- were you assigned to a specific  
20 building as a small group instructor?

21 A Yes, Bowers Elementary.

22 Q And how long were you assigned to Bowers Elementary?

23 A Two years.

24 Q And after those two years, which building were you  
25 assigned to?

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1 A York Learning Center.

2 Q And how long were you assigned to York Learning  
3 Center?

4 A One year.

5 Q And after York where were you assigned?

6 A Massillon Middle School.

7 Q And how long were you assigned to Massillon Middle  
8 School as a small group instructor?

9 A This will be my 13th year in the building.

10 Q Okay. Now, when you left Bowers Elementary and went  
11 to York Learning Center, did you ask -- were you  
12 promoted, or did you ask to be reassigned to York  
13 Learning Center?

14 A I was moved by administration.

15 Q Did you continue to perform the same type of duties  
16 at York Learning Center that you were performing at  
17 Bowers Elementary?

18 A Yes.

19 Q And what about when you moved from York Learning  
20 Center to Massillon Middle School, did you apply to  
21 move to that building?

22 A No, but York Learning Center was closed at the end of  
23 that school year, so I had to be moved somewhere  
24 else.

25 Q Now, what were your duties or job responsibilities as

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1           **a small group instructor?**

2   A       Providing services to students with special needs,  
3           writing IEPs, writing behavior plans, collaborating  
4           with teachers.

5   Q       **Now, do you deal with a specific population of**  
6           **students with special needs, do they have similar**  
7           **special needs, or do you just provide services to**  
8           **students across the board?**

9   A       The disability categories vary.

10   Q       **Okay. But consistent with your certification they're**  
11           **mild to moderate?**

12   A       Correct.

13   Q       I'm going to hand you what's going to be marked as --  
14           I'm going to do 1, Exhibit 1.

15           - - - -

16           (Thereupon, Defendant's Exhibit 1 was  
17           marked for identification.)

18           - - - -

19   Q       Nicole, I'm going to hand you the official document,  
20           but I'm also going to hand you one that's been  
21           enlarged --

22   A       Okay.

23   Q       -- for us to go over. What's been marked as Exhibit  
24           1 is a posting for the position of small group  
25           teacher from December of 2014, but I guess I would

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1 like for you to take a look at the job description  
2 and take your time and just verify whether what's  
3 listed in the job description accurately covers the  
4 duties that you performed as a small group  
5 instructor. And you can stop once you get to Other  
6 Duties and Responsibilities.

7 Have you had an opportunity to review it and I  
8 can ask you some questions?

9 A I have.

10 Q Okay. Does the information in this job description  
11 accurately reflect what you did as a small group  
12 instructor?

13 A Yes, with the exception of provide student schedules  
14 for substitutes.

15 Q And that's on which page?

16 A Well, it might be different in yours than in mine.

17 Q Okay. I have the large one, so --

18 A Oh, you do?

19 Q Yeah.

20 A So it's the third page.

21 Q Third page. So you didn't provide student schedules  
22 for substitutes?

23 A Correct, the district did not provide substitutes for  
24 small group teachers.

25 Q They did not, okay. Now, explain to me what you

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1       **would do during a typical day as a small group**  
2       **instructor, from the time you got to work until the**  
3       **end of your day.**

4     A     Are you speaking of when I started teaching, or are  
5           you speaking of now?

6     Q     **Well, you're an intervention specialist now, correct?**

7     A     Correct.

8     Q     **Okay.**

9     A     But last year I was a small group teacher. So like  
10           are we talking present day or back?

11    Q     **We can talk about last year, during the 2016-2017**  
12           **school year, what was a typical day like for you?**

13    A     I provided -- I went into the inclusion classroom in  
14           language arts and math and provided services to  
15           students and instruction to students within the  
16           general education classroom.

17           There was a period during the day called  
18           enrichment time in which I provided services in a  
19           pull-out small group setting within my classroom to  
20           address students' needs in various subject areas and  
21           to address IEP goals.

22           There was also a period of the day in which I  
23           met with a team of teachers, it was called teacher  
24           based teams, it was a period of time in which we met  
25           and discussed instruction.

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1 Q Did you have teacher based time each day?

2 A Yes.

3 Q And how long did that typically last each day?

4 A It was 40 minutes.

5 Q And how many other teachers would be involved in the  
6 TBT meetings, or small group instructors?

7 A It varied.

8 Q It varied?

9 A It varied from day-to-day.

10 Q And did it vary from day-to-day just given individual  
11 schedules, do you know?

12 A In some cases. It depended. We had different days  
13 in which we met with our subject level teachers, and  
14 then there were days where we met as a larger grade  
15 level team.

16 Q Now, with respect to subject level, since you've been  
17 employed in the district, have you always provided  
18 services to students in language arts and math as a  
19 small group instructor?

20 A Yes.

21 Q And since you went from the York Learning Center to  
22 Massillon Middle School, what grade level students  
23 did you provide services to?

24 A In which building?

25 Q At Massillon Middle School.

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1 A The year that I started in Massillon Middle School?

2 Q Yes.

3 A Fifth grade.

4 Q And over the course of the 13 years that you've  
5 been -- that you were a small group instructor at  
6 Massillon Middle School, did you provide services to  
7 students other than in the fifth grade?

8 A Yes.

9 Q What grades did you provide services to students?

10 A Fourth grade and sixth grade, in addition to fifth  
11 grade.

12 Q Now, during a given school year, did you ever provide  
13 services to students in different grade levels, so  
14 did you ever provide services to students in both --  
15 services to students in both fourth and fifth grade?

16 A Yes.

17 Q How many years would you say that you provided  
18 services to students in two grade levels?

19 A Maybe five or six.

20 Q Have you ever provided services to students in all  
21 three grade levels while you were at Massillon Middle  
22 School?

23 A Yes.

24 Q And how many years would you say you did that?

25 A Once.

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1 Q During the 2016-2017 school year, in what grade did  
2 you provide services to students?

3 A Fifth and sixth.

4 Q Fifth and sixth. I'm just going to go back just a  
5 few years. Do you have a specific caseload of  
6 students who you're responsible for providing  
7 services to, did you as a small group instructor?

8 A Yes.

9 Q Okay. In the 2013-2014 school year, do you recall  
10 how many students were assigned to your caseload?

11 A I don't recall.

12 Q What about the 2014-15 school year, do you remember  
13 how many students were assigned to your caseload?

14 A No, I don't remember.

15 Q '15-16 do you remember?

16 A No.

17 Q What about '16-17, do you remember how many students  
18 were assigned to your caseload?

19 A I don't remember the exact number, I'd be guessing.

20 Q And I don't want you to guess. Would you say for the  
21 2016-2017 you had more than 10 students assigned to  
22 your caseload?

23 A Yes.

24 Q Did you have over 20 students assigned to your  
25 caseload?

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1 A No.

2 Q So it was more than 10, but under 20?

3 A Yes.

4 Q And the students who were assigned to your caseload,  
5 were those the students who you would provide  
6 language arts and math services to in the inclusion  
7 classroom?

8 A Correct.

9 Q Okay. And did you also provide the students who were  
10 on your caseload with services in a small group  
11 setting in enrichment time?

12 A Correct.

13 Q Now, outside of the students assigned to your  
14 caseload, for example, during the 2016-17 school  
15 year, did you provide services to any other students?

16 A '16-17?

17 Q Yes.

18 A Yes.

19 Q Okay. And what type of services did you provide to  
20 students outside of your assigned caseload?

21 A I provided services in a small group pull-out  
22 setting.

23 Q And how many students, other than the ones on your  
24 caseload, would you provide services to in a small  
25 group pull-out setting '16-17 school year?

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1 A It varied, but it was between like one and three.

2 Q And just help me understand, you have students  
3 assigned to your caseload, under what circumstances  
4 would you provide services -- why would you be  
5 providing services to students who were not assigned  
6 to your caseload?

7 A Administration had asked that I provide help to  
8 provide services to fifth graders in supporting  
9 the -- another small group teacher who was providing  
10 services in fifth grade.

11 Q And did you provide that assistance during the entire  
12 2016-2017 school year?

13 A Yes.

14 Q And with respect to the students who were assigned to  
15 your caseload, in addition to providing services to  
16 them, were you responsible for writing each of those  
17 students' IEPs?

18 A The students on my caseload?

19 Q Yes.

20 A Yes, I was responsible for writing their IEPs.

21 Q Were you responsible for writing their behavior plans  
22 as well?

23 A Yes.

24 Q And you collaborated with other teachers concerning  
25 the students on your caseload?

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Page 21

1 A Yes.

2 Q And if you were responsible for providing language  
3 arts and math services to those students, was there  
4 another small group instructor who would be  
5 responsible for providing other services to the  
6 students on your caseload?

7 A I had assistance from another small group teacher  
8 during the pull-out portion.

9 Q Did you have assistance on a frequent basis from that  
10 individual?

11 A Several days a week.

12 Q Now, when you were assigned to Massillon Middle  
13 School, and we can talk about between the 2013-14  
14 school year through the 2016-17 school year, to whom  
15 did you report, the title? Did you report to the  
16 principal of the building?

17 A Yes.

18 Q And who's the current principal of Massillon Middle  
19 School?

20 A Can I ask a clarification?

21 Q Yes. I'm sorry --

22 A It's two separate buildings now, it's Massillon  
23 Intermediate and Massillon Junior High, so --

24 Q So just for clarification, when you discussed the  
25 fact that you provided services to students in grades

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1           four, five and six over the past 13 years, you were  
2           providing services to students at the intermediate  
3           school, correct?

4     A       Yes, once it -- yes.

5     Q       Finish your thought, "once it" what?

6     A       Once it went from Massillon Middle School, it went  
7           from one building to two separate buildings.

8     Q       Okay. And when did it switch from Massillon Middle  
9           School, being one building, to two separate  
10          buildings, being Massillon Intermediate and Massillon  
11          Middle?

12    A       I don't remember the year.

13    Q       Okay. When it went from one building to two  
14          buildings, were you just responsible for reporting to  
15          the Massillon Intermediate principal at some point?

16    A       Yes.

17    Q       And for the '16-17 school year, who was the Massillon  
18          Intermediate principal?

19    A       Jarred Zapolnik.

20    Q       And can you recall how many years you've reported  
21          directly to Jarred Zapolnik?

22    A       Including this year?

23    Q       Yes.

24    A       Four.

25    Q       So four years including this school year?

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Page 23

1 A Correct.

2 Q Did Mr. Zapolnik evaluate you in the last three  
3 years?

4 A Yes.

5 Q And what type of evaluation did you receive from  
6 Mr. Zapolnik, if you can remember an overall rating?

7 A Accomplished.

8 Q Were you evaluated each of those three years, that  
9 you recall?

10 A Not a full evaluation. They do a short evaluation on  
11 what they call the off years.

12 Q Now, while you were employed as a small group  
13 instructor, did you hold any supplemental contracts?

14 A No.

15 Q Have you ever held a supplemental contract in  
16 addition to your teaching contract since you've been  
17 with Massillon?

18 A No.

19 Q Have you been involved in any other school related  
20 activities during your employment as a small group  
21 instructor?

22 A Yes.

23 Q And what type of activities have you been involved  
24 in?

25 A I did student council.

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Page 24

- 1 Q **Were you the advisor for student council?**
- 2 A I was one of the advisors for student council.
- 3 Q **And which grades?**
- 4 A It was at the elementary, so I believe we would be  
5 involved, maybe third to fifth.
- 6 Q **And when did you do that?**
- 7 A My first two years in the district at Bowers.
- 8 Q **Any other activities other than student council?**
- 9 A I did after school tutoring.
- 10 Q **How long did you do after school tutoring?**
- 11 A I believe I did it two years.
- 12 Q **And was there a specific grade level that you  
13 provided tutoring services for?**
- 14 A I don't remember what grade level it was.
- 15 Q **Now, you're currently employed as an intervention  
16 specialist, correct?**
- 17 A Yes.
- 18 Q **And you've been in that position for how long?**
- 19 A This year.
- 20 Q **And just generally, what are your duties and  
21 responsibilities as an intervention specialist? I  
22 have a job description.**
- 23 MS. MASSEY: Mark this as 2.
- 24 - - - -
- 25 (Thereupon, Defendant's Exhibit 2 was

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---

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marked for identification.)

2 - - - -

4      A      Theoretical

5 Q If you could take a moment to look at what's been  
6 marked as Exhibit 2, it does say Massillon City  
7 Schools Internal Job Posting, but below it has the  
8 job description for the position of intervention  
9 specialist.

10 A Okay.

11 Q Does this, what's been marked as Exhibit 2,  
12 accurately reflect what your duties are as an  
13 intervention specialist?

14 A Yes, with the exception that I do not currently  
15 supervise teacher aides.

16 Q Okay. Now, did your -- you explained earlier what  
17 you did as a small group instructor. Did your duties  
18 change significantly from what you did as a small  
19 group instructor to what you do now as an  
20 intervention specialist?

21 A Not significantly; however, we do provide support to  
22 students who are not identified within the classroom  
23 setting, and we are now responsible for providing  
24 lesson plans.

25 Q Before you became an intervention specialist, was it

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1                   your understanding that those individuals who held  
2                   the position of intervention specialist while you  
3                   were employed as a small group instructor, was it  
4                   your understanding that they provided support to  
5                   students who are not identified in the classroom  
6                   setting?

7   A       Yes.

8   Q       Okay. Was it your understanding that those  
9                   individuals also provided lesson plans?

10   A       Yes.

11   Q       And how many students are currently assigned to your  
12                   caseload as an intervention specialist?

13   A       I believe it's 12.

14   Q       And what grades are those students in?

15   A       Sixth and seventh.

16   Q       And how many are in each grade? How many sixth grade  
17                   students do you service, or, are on your caseload,  
18                   rather?

19   A       I believe it's eight.

20   Q       And then four seventh graders?

21   A       Correct.

22   Q       And with respect to the students on your caseload, do  
23                   you go into the inclusion classroom in language arts  
24                   and math, in their general education classrooms?

25   A       No.

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1 Q What do you do now?

2 A I am in their science and social studies classrooms.

3 Q And that's for both sixth and seventh grade students?

4 A Correct.

5 Q And can you explain to me what that entails, in terms  
6 of being in their science and social studies  
7 classrooms and providing services to them?

8 A Providing instruction, reteaching of concepts,  
9 accommodations of work, collaboration with a teacher,  
10 and any other behavioral supports that the student  
11 may need.

12 Q And the instruction -- I'm sorry, I can't read my  
13 writing -- the reinforcement of concepts -- I'm  
14 sorry, reteaching of concepts --

15 A Correct.

16 Q -- accommodations, collaboration with teacher and  
17 behavior supports, were those the type of services  
18 that you would provide to students who were in the  
19 language arts and math classrooms when you were a  
20 small group instructor?

21 A Yes.

22 Q And with respect to the students on your caseload  
23 now, do you also provide enrichment time services in  
24 a small group setting?

25 A Yes.

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1 Q And do you also as an intervention specialist meet  
2 with -- have TBT meetings?

3 A Yes.

4 Q And do you have those meetings each day?

5 A We have three days typically with our content team,  
6 one day for a meeting as a whole grade level on PBIS,  
7 and then the last day is for the grade level to meet  
8 with administration.

9 Q Now, when you were a small group instructor, did you  
10 meet with administration as well during your TBT  
11 meetings?

12 A Yes.

13 Q And how often would you meet with administration, for  
14 example, during the 2016-17 school year?

15 A Typically once a week.

16 Q Now, you stated that you provide support to students  
17 currently who are not identified in a classroom  
18 setting. How many students would you say you provide  
19 services to who are not identified?

20 A That's difficult to say.

21 Q Okay. Give me an example of a given day, how many  
22 students would you need to service who were not --  
23 who are not identified? How many students would you  
24 need to provide assistance to who are not identified?

25 A The reason I'm having a hard time answering the

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1 question is because when I go into the classroom,  
2 depending on what they're doing, they may be working  
3 in pairs, for instance, on an assignment, and I may  
4 be walking around assisting any student in that  
5 classroom that needs assistance or reteaching or  
6 guidance.

7 Q **And you do the reteaching and guidance for students  
8 who are not identified?**

9 A Correct.

10 Q **So it just varies day-to-day based on the needs of  
11 the classroom?**

12 A Yes.

13 Q **And how many students in total are in those  
14 classrooms, for example, the science classroom?**

15 A Twenty, approximately.

16 Q **And what about social studies?**

17 A Again, 20, approximately.

18 Q **And in terms of providing lesson plans, who do you  
19 provide the lesson plans to?**

20 A The principal.

21 Q **And do you work with, for lack of a better word, the  
22 regular -- the science teacher to come up with the  
23 lesson plan?**

24 A Correct.

25 Q **And you also work with the social studies teacher to**

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1           **create a lesson plan?**

2   A      Correct.

3   Q      **And is the lesson plan that you create for the  
4           students who are on your caseload specifically?**

5   A      No.

6   Q      **It's for all of the students in the classroom?**

7   A      Correct.

8   Q      **Now, you stated you still report to Jarred Zapolnik,  
9           who's the principal of the intermediate school. Do  
10          you now also report to the principal of the middle  
11          school?**

12   A      I report to Vince Lindsey as well, who is the  
13          principal of the junior high.

14   Q      **Junior high, okay. And have you been evaluated by  
15           Mr. Lindsey since you've been an intervention  
16          specialist?**

17   A      No.

18   Q      **Have you been evaluated by Mr. Zapolnik?**

19   A      No.

20   Q      **Now, in your Complaint you stated that you have a  
21          visual impairment due to, is it aniridia?**

22   A      Yes.

23   Q      **And that is a genetic condition, correct?**

24   A      Correct.

25   Q      **And you also state that you're legally blind, with a**

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1                   **corrected visual acuity of 20 over 200 or less; is**

2                   **that correct?**

3   A              Correct.

4   Q              **And what exactly is aniridia?**

5   A              It's a rare genetic eye condition in which, in my  
6                   case, the iris of the eye did not properly form.

7   Q              **And is this a condition that you've had since birth?**

8   A              Correct.

9   Q              **Are there any medications that you take for your  
10                  condition?**

11   A             Not specifically aniridia, no.

12   Q             **Now, when you were first hired in the school  
13                  district, did you advise any administrators of your  
14                  medical condition?**

15   A             Yes.

16   Q             **Do you recall, were they individuals who you reported  
17                  to? Was it the building principal?**

18   A             The -- Chris Smith, who was district level  
19                  administrator who hired me, and Anne McGaughey, who  
20                  was the special ed. director of the district at the  
21                  time, who also was a part of hiring me, and then Chad  
22                  Agnes, who was the building principal at Bowers  
23                  Elementary.

24   Q             **Was it Chris Smith, the one who was superintendent at  
25                  Canton, is that the same Chris Smith?**

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1 A Yes.

2 Q What type of -- well, let me ask this. Do you  
3 receive ongoing medical treatment for your condition?

4 A Yes.

5 Q And what type of treatment do you receive?

6 A Regular appointments with my eye doctor.

7 Q Does your treatment impact your ability to work in  
8 any way?

9 A No.

10 Q And do you ever have to take extended leaves of  
11 absence for your treatment related to your aniridia?

12 A No.

13 Q Does your treatment impact any other aspect of your  
14 life?

15 A No.

16 Q Have you ever been physically injured while working  
17 for Massillon?

18 A No.

19 Q Now, has your aniridia progressed or worsened since  
20 you've been employed in the district?

21 A There is variances in my condition, it can change to  
22 some degree, and that's why I receive consistent  
23 treatment from my eye care professional, but there  
24 has not been a significant change in --

25 Q Now, what major life activities are substantially

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1                   **limited by your medical condition?**

2   A     Seeing, reading, driving.

3   Q     **And how does it impact your ability to read? What do**  
4                   **you have to do in order to be able to read printed**  
5                   **documents?**

6   A     They have to be in large type, or I have to have some  
7                   way in which to magnify the document to make it  
8                   large.

9   Q     **For example, when you review students' work, is that**  
10                  **in large type, or do you have to use a magnifier for**  
11                  **that?**

12   A     I usually use a magnifier. I occasionally large  
13                  print it.

14   Q     **And for my own edification, is it a hand-held**  
15                  **magnifier, or is it like glasses that you use?**

16   A     Sometimes I use a hand-held magnifier. Sometimes I  
17                  take student work home and use my CCTV.

18   Q     **And in terms of your ability to see, how does it**  
19                  **impact you on a day-to-day basis?**

20   A     Are you -- asking for clarification, are you speaking  
21                  of work, or just my everyday life?

22   Q     **Your everyday life -- let's talk about work first.**

23   A     It impacts my ability to read written material.  
24                  There are different techniques that I use with  
25                  students to accommodate my vision impairment.

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1 Q **What type of techniques are those?**

2 A Well, for example, instead of having them write in  
3 pencil on a piece of paper, I may have them write on  
4 a white board with a marker.

5 Q **Okay.**

6 A I have to adjust how I move about a classroom in  
7 order to be in a position to visually monitor  
8 students.

9 Q **Anything else you can think of?**

10 A It impacts my ability to see presentations if they're  
11 done on a TV screen or a projection screen of some  
12 sort, videos or PowerPoint presentations.

13 Q **And how does your condition -- I'm sorry, are you  
14 finished?**

15 A I think so.

16 Q **Now, how does your aniridia substantially limit your  
17 ability to travel?**

18 A I drive with a restricted license, and which I must  
19 use a bioptic driving device and I must travel during  
20 daylight time only.

21 Q **Any other way it limits your ability to travel? And  
22 by "travel" we're talking about driving?**

23 A Well, I was talking about driving.

24 Q **You were talking about driving, okay.**

25 A Are you speaking of travel as in physical travel?

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1 Q Well, in the Complaint it says substantially limited  
2 your ability to see, read and travel, so I just want  
3 to make sure we have the same understanding of what  
4 "travel" means, and you described driving.

5 A That's the primary.

6 Q Okay.

7 A However, when walking in crowded areas it can be  
8 difficult to see things that might be a distance  
9 ahead of me, or seeing signs if I'm going to, like, a  
10 bus station or -- that impacts my travel.

11 Q Does having extra lighting help your ability to see  
12 at all?

13 A No, not necessarily. I am actually photophobic, so,  
14 for instance, sunlight is not great.

15 Q Okay.

16 A Generally speaking indoor lighting is usually  
17 sufficient.

18 Q And can you describe how your medical condition  
19 affects you in your daily activities? Are you  
20 able -- does it impact your ability to care for  
21 yourself on a day-to-day basis?

22 A I've learned alternative techniques to ensure that I  
23 can take care of myself.

24 Q And what about shopping, whether it's food or  
25 clothes, does it impact your ability to perform those

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1           **tasks?**

2   A       I'm able to shop.

3   Q       Now, does your condition limit you in your ability to  
4           work as an intervention -- as a teacher in general,  
5           whether it's a small group instructor or intervention  
6           specialist?

7   A       It doesn't impact me as long as I have  
8           accommodations.

9   Q       And what percentage of your day involved -- would you  
10          say involved reading as a small group instructor?

11   A       Sixty percent.

12   Q       And is the 60 percent primarily inclusive of the  
13          services that you provided to students on a  
14          day-to-day basis?

15   A       No.

16   Q       Okay. What else did the reading entail, the  
17          60 percent?

18   A       It would entail reading materials or documents,  
19           whether it be IEPS, ETRs.

20   Q       **Student work?**

21   A       Student work, professional material provided by  
22           administration.

23   Q       What percentage, out of the 60 percent, would you say  
24          involved reading professional material provided by  
25          administration?

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1 A Asking for clarification, are you speaking on a daily  
2 basis?

3 Q Yes, because I asked what percentage of your day  
4 involved reading as a small group instructor, and you  
5 said 60 percent.

6 A Ten percent.

7 Q What percentage of your day involved traveling as a  
8 small group instructor? And we discussed driving,  
9 and then you mentioned walking as well. We can take  
10 out driving. Let's say traveling to and from  
11 classrooms or meetings.

12 A What percentage?

13 Q Yes.

14 A Five percent.

15 Q Five percent. And what percentage of your day  
16 involves reading as an intervention specialist?

17 A Sixty.

18 Q And similar to when you were a small group  
19 instructor, does 10 percent of that involve  
20 professional materials provided by administration?

21 A Yeah.

22 Q And as an intervention specialist, what percentage of  
23 your day involves traveling back and forth to  
24 classrooms throughout the building?

25 A Ten percent.

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1 Q If we can take a look back at your small group  
2 instructor job description, and you had an  
3 opportunity to look at the Essential Functions --

4 A Um-um.

5 Q -- of the position, are there any specific job tasks  
6 or Essential Functions that are listed that are  
7 problematic as a result of your substantial  
8 limitation in the activity of seeing or reading?

9 MS. WHITE: Can you clarify whether  
10 that's with or without accommodations?

11 MS. MASSEY: With or without  
12 accommodation. Do you want me to ask her  
13 with accommodation or --

14 MS. WHITE: I think so, to be fair,  
15 yeah.

16 Q So without an accommodation, what specific jobs or  
17 tasks are problematic as a result of your substantial  
18 limitation in the activity of seeing or reading?

19 A "Follow individual students IEPs.

20 "Ensure students are learning all subject  
21 material by reinforcing the completion of  
22 assignments."

23 Q Say that again, I'm sorry.

24 A "Ensure students are learning all subject material by  
25 reinforcing the completion of assignments.

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1 "Maintain and improve professional competence.

2 "Assess the accomplishments of students on a  
3 regular basis and provide progress reports as  
4 required.

5 "Assist the administration in implementing all  
6 procedures and rules governing student life and  
7 conduct, and develop reasonable rules of classroom  
8 behavior and procedure for the classroom, and  
9 maintain order in the classroom in a fair and just  
10 manner.

11 "Follow the scope and sequence of the  
12 instructional program as defined in the content  
13 standards which have been approved by the Board of  
14 Education.

15 "Act as a teacher, facilitator and information  
16 source in subject area specialty.

17 "Teach new concepts and facilitate different  
18 activities enabling students to learn in different  
19 ways.

20 "Participate in building 'teams' when requested  
21 and agreed upon.

22 "Organize various subject-specific programs  
23 within assigned building."

24 Q **I just want to make sure we're still talking about  
25 seeing and reading.**

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1 A "Attend meetings and in-services required by the  
2 principal/director of pupil services/superintendent."

3 I do believe all those involved reading in some  
4 manner.

5 Q **What about travel, which duties are problematic  
6 without an accommodation in terms of travel?**

7 A "Attend parent-teacher conferences.

8 "Attend IEP meetings.

9 "Attend educational field trips.

10 "Make provisions for being available to students  
11 and parents for educational-related purposes outside  
12 the instructional day.

13 "Participate on building 'teams' when requested  
14 and agreed upon.

15 "Attend meetings and in-services required by the  
16 principal/director of pupil services/superintendent."

17 Q **And with respect to the job description, what  
18 specific job tasks are problematic as a result of  
19 your substantial limitation in activities of seeing  
20 and reading with an accommodation?**

21 A There are none.

22 Q **Okay. What about what specific job tasks are  
23 problematic as a result of your substantial  
24 limitation in the activity of traveling with an  
25 accommodation?**

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1 A There are none.

2 Q I'm going to do the same thing for the position of  
3 intervention specialist. Take a look at that. What  
4 specific -- referring to Exhibit 2, sorry, what  
5 specific job tasks are problematic as a result of  
6 your substantial limitation in the activity of seeing  
7 and reading without an accommodation?

8 A "Prepare clear and timely lesson plans.

9 "Attend meetings and in-services as required.

10 "Assess the accomplishments of students on a  
11 regular basis and provide progress reports as  
12 required.

13 "Work with regular classroom teachers in  
14 co-teaching or inclusion setting.

15 "Follow individual student IEPs."

16 Q And what specific job tasks are problematic as a  
17 result of your substantial limitation in the activity  
18 of traveling without an accommodation?

19 A "Attend meetings and in-services as required.

20 "Attend parent-teacher conferences.

21 "Attend IEP meetings."

22 Asking for clarification, do I see anything  
23 under the Other Duties and Responsibilities section?

24 Q Yes, we can go through those.

25 A "Attend staff/IEP/behavior management team/evaluation

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1 and curriculum meetings as necessary."

2 Q Looking at the job description again for intervention  
3 specialist, what specific job tasks are problematic  
4 as a result of your substantial limitation in the  
5 activity of seeing and reading with an accommodation?

6 A None.

7 Q What about with an accommodation for traveling?

8 A None.

9 Q Do you ever have to take any breaks during the day to  
10 rest your eyes at all if and when you become  
11 fatigued?

12 A I have during my lunchtime.

13 Q During your lunchtime?

14 A Um-um.

15 Q And how long would you say on average?

16 A It varies.

17 Q Any other times you need to take a break to rest your  
18 eyes outside of lunchtime during your workday?

19 A I don't typically have any other time.

20 Q So that's no?

21 A No.

22 MS. MASSEY: Can we take a five minute  
23 break?

24 MS. WHITE: Um-um.

25 - - - -

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1 (Thereupon, a recess was had.)

2 - - - -

3 Q Now, in paragraph 12 of your Complaint, it states  
4 that "At the time she was hired, Plaintiff informed  
5 Defendant personnel of her disability and her need  
6 for a reasonable accommodation in accessing printed  
7 and written material." You may not recall that  
8 specific paragraph, but do you recall your Complaint  
9 having some information in there concerning the fact  
10 that you notified the district of your need for a  
11 reasonable accommodation when you were hired?

12 A Yes.

13 Q Okay. And do you recall which Defendant personnel  
14 you notified of your need for a reasonable  
15 accommodation in accessing printed and written  
16 material at the time of your hire?

17 A Anne McGaughey, who was the special education  
18 director at the time --

19 Q Okay.

20 A -- and Chad Agnes, the principal.

21 Q And Chad Agnes was the principal of, was that  
22 Bowers --

23 A Yes.

24 Q -- Elementary?

25 Now, did you notify them verbally of your need

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1                   **for an accommodation?**

2   A    Correct.

3   Q    **Did you notify them in writing at all?**

4   A    I don't recall.

5   Q    **And what type of accommodation at the time you were  
6         hired did you ask for in accessing printed and  
7         written material?**

8   A    I asked for everything to be provided to me in large  
9         print.

10   Q    **And did you specify a particular font size at that  
11         time?**

12   A    If I recall, they asked me to show them an example.

13   Q    **And do you recall the font size of the example you  
14         provided to them?**

15   A    No.

16   Q    **Did you ask for any assistive technology as a  
17         reasonable accommodation after you were hired?**

18   A    Not immediately.

19   Q    **When after you were hired did you ask for assistive  
20         technology as a reasonable accommodation?**

21   A    The third year in the district.

22   Q    **And what type of technology did you ask for?**

23   A    I asked for ZoomText, which is a magnification and  
24         reading software.

25   Q    **Was that provided to you?**

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1 A Yes, at the beginning of my fourth year.

2 Q **And do you recall who you asked for the ZoomText?**

3 A John Graven.

4 Q **What was John Graven's title at the time?**

5 A I don't know if this was the official title, but he  
6 was the special education director.

7 Q **So did he replace Anne McGaughey?**

8 A Yes.

9 Q **And did John Graven, was he the one responsible for  
10 getting you the ZoomText, did he provide it to you,  
11 or did someone in technology get it to you?**

12 A He's the one that did the research on it to ensure it  
13 was the proper accommodation from the district  
14 standpoint. I believe that the technology department  
15 was the one that actually did the purchase, possibly.  
16 They were the ones that installed it.

17 Q **Any other technology, other than the ZoomText, at  
18 that time?**

19 A No.

20 Q **Any assistive devices or anything like that that you  
21 requested at the time you were initially hired, other  
22 than technology?**

23 A Not that I recall.

24 Q **And at the time you were hired, did you request an  
25 accommodation in terms of travel?**

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1 A Yes.

2 Q And what did you request?

3 A That there was some leniency on arrival and departure  
4 times from meetings.

5 Q And was that accommodation provided to you?

6 A Yes.

7 Q Now, during your employment as a small group  
8 instructor, you would have been responsible for  
9 attending IEP meetings; is that correct?

10 A Yes.

11 Q And did parents ever request to meet with you outside  
12 of your nonrestricted arrival and departure times?

13 A None that I recall.

14 Q I want to clarify, is that during your entire  
15 employment as a small group instructor?

16 A None that I can remember.

17 Q Okay. And when you were a small group instructor,  
18 let's say in the last few years at the intermediate  
19 school, what time did you typically hold IEP  
20 meetings, or, what time were they typically held?

21 A Typically they were held during the teachers  
22 conference period.

23 Q And what time was that?

24 A It varied from year to year.

25 Q During the '16-17 school year, do you recall what

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1 time that would have been, the conference period?

2 A Maybe 9:30.

3 Q Okay. Do you recall any meetings being held while  
4 you were at the intermediate school before 9:30, any  
5 IEP meetings?

6 A Not that I recall.

7 Q Okay. And in terms of travel, do you recall any  
8 other meetings being held before your  
9 arrival/departure time that you had to attend?

10 A Are we speaking of, so like staff meetings or  
11 anything?

12 Q So let's start with staff meetings first.

13 A And your question is, again?

14 Q Do you recall any meetings being held before your  
15 normal arrival time, when you were at the  
16 intermediate school as a small group instructor?

17 A Not before.

18 Q And what was your arrival time?

19 A 8:20.

20 Q And what time did your day start, officially?

21 A 8:20.

22 Q 8:20. So you would arrive at work at 8:20, and your  
23 day would start at 8:20? I just want to be clear.

24 A Well, what do you mean by my day starting?

25 Q What is the official teacher day start time, or what

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1                   **was the official teacher start time?**

2   A       The official day for small group instructors or  
3                   teachers was from 8:20 to 3:20.

4   Q       **Did you arrive to school before 8:20 in order to**  
5                   **prepare for your day?**

6   A       If the daylight would allow it.

7   Q       **And is there a typical time of year where the**  
8                   **daylight allows for you to get to work before 8:20?**

9   A       The beginning of the school year and the end of the  
10                  school year.

11   Q       **And during the time you were a small group**  
12                  **instructor, let's do from before the 2013-2014 school**  
13                  **year, do you recall any professional development**  
14                  **trainings being held before your 8:20 start time?**

15   A       Not that I recall.

16   Q       **Now, in paragraph 20 of your Complaint, it states**  
17                  **that "From 2002 to 2013 Defendant regularly provided**  
18                  **Plaintiff with written materials in large print as a**  
19                  **reasonable accommodation and accommodated Plaintiff's**  
20                  **night driving limitation by scheduling meetings**  
21                  **during the day where possible." So from 2002 to**  
22                  **2013, did Defendant always provide you with**  
23                  **accessible printed and written materials for**  
24                  **meetings, let's start with for meetings?**

25   A       Yes.

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1 Q What about professional development, were you always  
2 provided with accessible printed and written  
3 materials from 2002 to 2013?

4 A Almost always.

5 Q And by "almost always," is there a percentage that  
6 you could attribute to how often you were not  
7 provided with materials in an accessible format  
8 between 2002 and 2013?

9 A Like one percent.

10 Q When you were not provided with materials in an  
11 accessible format, what did you do?

12 A Asked that they provide it at a later time.

13 Q And who did you ask to provide it at a later time,  
14 who did you speak to?

15 A Whoever was providing the training.

16 Q And when you asked those individuals to provide those  
17 materials at a later time, did they provide them to  
18 you in an accessible format?

19 A Yes.

20 Q Now, between 2002 and 2013, did you ever tell anyone  
21 while the training was going on that you needed  
22 materials in an accessible format, while the training  
23 was taking place?

24 A No.

25 Q And why not?

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1 A It would have been disruptive to the process, to the  
2 presentation.

3 Q And between 2002 to 2013, did you ever have your  
4 computer with you during these presentations in order  
5 to review the documents, the handouts?

6 A No, because I did not have a laptop.

7 Q Now, between 2002 and 2013, did you keep track of the  
8 number of times you were not provided with printed  
9 and written materials in an accessible format?

10 A No.

11 Q And why not?

12 A Because it was rare.

13 Q And you stated earlier that you gave an example of a  
14 document to the administration showing what size font  
15 you needed in order to review printed and written  
16 materials. At some point between 2002 and 2013, did  
17 you request that documents be provided in any  
18 specific font size?

19 A Not that I recall.

20 Q Now, between 2002 and 2013, was there a particular  
21 administrator who was primarily responsible for  
22 providing you with printed and written materials in  
23 an accessible format?

24 A There were two primary, one was always the principal,  
25 and the other was John Graven, director of special

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1 education.

2 Q And what steps did John Gravin take to verify that  
3 you had printed and written materials in an  
4 accessible format? Did he get them to you in  
5 advance?

6 A In some cases he got them to me in advance, in other  
7 times he provided them to me at the meeting or  
8 in-service.

9 Q Do you know whether Mr. Graven advised other  
10 individuals of the need for you to have documents in  
11 a larger print?

12 A Yes, it's my understanding that he had communicated  
13 with other administration regarding that need.

14 Q And you also said the principal also was primarily  
15 responsible for providing printed and written  
16 materials in an accessible format. Was there a  
17 specific individual, or just whomever held the  
18 principal position?

19 A Whomever held the principal position.

20 Q And this would be at the three buildings you were in,  
21 being Bowers Elementary?

22 A Um-um.

23 Q York Learning Center?

24 A Yes.

25 Q And then Massillon Middle/Intermediate School?

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1 A Yes.

2 Q Did you regularly communicate with John Graven  
3 regarding your accommodation needs?

4 A Yes.

5 Q How often would you say you spoke with him?

6 A Once a month.

7 Q And what did those conversations typically entail  
8 once a month?

9 A Where accommodations were anticipated to be needed,  
10 or if there were individuals who were needing his  
11 assistance in understanding what was needed.

12 Q And at this time, between 2002 and 2013, were there  
13 any other accommodations provided, other than  
14 providing you with documents and written materials in  
15 an accessible format and accommodating your travel  
16 restrictions?

17 A Well, the ZoomText was an accommodation.

18 Q ZoomText. Anything else?

19 A I don't know if this goes along with the travel  
20 restrictions, but there was the accommodation of  
21 adjusting meeting times.

22 Q Okay. Other than John Graven and the applicable  
23 principal, did any other administrators in the  
24 district ensure you were provided with printed and  
25 written materials in an accessible format between

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1           **2002 and 2013?**

2   A       I do remember Renee Parr and Kathy Kallekar Nolan,  
3            who were at the time involved in the curriculum  
4            department, did provide some accessible materials,  
5            accommodated materials to me.

6   Q       **And between 2002 to 2013, did you ever speak with the**  
7            **superintendent about your need for a reasonable**  
8            **accommodation? By "superintendent," I just mean the**  
9            **person who held that position at any given time.**

10   A       Yes.

11   Q       **Okay. And do you recall who you spoke with, which**  
12           **superintendent you spoke with about your need for**  
13           **accommodation between 2002 and 2013?**

14   A       I spoke to two different superintendents.

15   Q       **Okay. And who were they?**

16   A       The first one was Fred Blosser, and I communicated  
17           with him through writing about the need for time to  
18           large print materials.

19   Q       **And was that accommodation provided to you?**

20   A       Yes.

21   Q       **And who was the other superintendent?**

22   A       Lisa Carmichael.

23   Q       **And what did you discuss with Lisa Carmichael between**  
24           **2002 and 2013?**

25   A       I spoke with her by phone, and we discussed the

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1 accommodation of being placed on -- as priority for  
2 technology issues. So that was actually an  
3 additional accommodation that was provided to me as  
4 well.

5 Q **And in terms of priority, did that entail updates to**  
6 **your software, or what did that involve?**

7 A That involved if I was having technology issues or if  
8 my computer was down, it wasn't working properly.

9 Q **So you would be able to have access immediately to**  
10 **the technology department?**

11 A Yes.

12 Q **And was that accommodation provided?**

13 A Yes.

14 Q **Did you have occasion to speak with the assistant**  
15 **superintendent between 2002 and 2013 regarding your**  
16 **need for an accommodation?**

17 A Possibly.

18 Q **Do you recall any specific conversations between 2002**  
19 **and 2013?**

20 A I don't recall any specifics.

21 Q **Do you recall having any issues with your request for**  
22 **an accommodation in speaking with the assistant**  
23 **superintendent?**

24 A I do remember a request that I made to the assistant  
25 superintendent about an adjustment to a meeting time.

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1 Q And that was between 2002 and 2013?

2 A Yes.

3 Q And was the meeting time adjusted?

4 A Yes.

5 Q And in terms of your need for scheduling meetings  
6 during the day in order to accommodate your travel  
7 restrictions, between 2002 and 2013, did you  
8 primarily work with your building principal on those  
9 issues?

10 A Yes.

11 Q Okay. And you were provided with accommodations?

12 A Yes.

13 Q Did you work with John Graven on any travel?

14 A Yes.

15 Q And you received accommodations?

16 A Correct.

17 Q Okay. And then you just noted that you spoke with  
18 the assistant superintendent --

19 A Yes.

20 Q -- and were accommodated. And who was the assistant  
21 superintendent with whom you spoke?

22 A Mark Fortner.

23 Q Were there any other administrators with whom you  
24 spoke about travel restrictions between 2002 and  
25 2013?

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1 A Not that I recall.

2 Q Now, between 2002 and 2013, was there an  
3 accommodation plan written or otherwise put into  
4 place with respect to your request for an  
5 accommodation?

6 A No.

7 Q Okay. Between 2002 and 2013, do you believe the  
8 district engaged in the interactive process to  
9 determine what your needs were from an accommodation  
10 standpoint?

11 A Yes.

12 Q Now, in response to interrogatory number six, and  
13 I'll just tell you what we asked you, to identify  
14 each administrator Plaintiff informed of her  
15 disability-related need for reasonable accommodations  
16 in accessing printed and written materials in  
17 paragraphs 89, 102 and 112 between January 2014  
18 through present, and you listed 10 individuals. I'm  
19 just going to ask you a few questions. The first  
20 person you listed was superintendent Richard  
21 Goodright. Do you recall when you may have first  
22 advised him of your need for a reasonable  
23 accommodation?

24 A When he received the first accommodation plan.

25 Q So that would have been in 2014?

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1 A Correct.

2 Q Okay. The second person you listed was Mark Fortner,  
3 the assistant superintendent. Do you recall when you  
4 first advised him of your need for an accommodation?

5 A What time period are we speaking of again?

6 Q Well, this was between -- the question related to  
7 January 2014 through present. Did you advise Mark  
8 Fortner -- when did you advise Mark Fortner of your  
9 need for an accommodation?

10 A Well, from January 2014 moving forward, it would have  
11 been the accommodation plan as well.

12 Q And it sounds like you had a conversation with him  
13 before January 2014 for your -- regarding your need  
14 for an accommodation?

15 A Yes, I reached out to him prior to January 2014.

16 Q Do you recall when the first time was you might have  
17 had a conversation with him about your need for an  
18 accommodation?

19 A No, I don't recall when the first time was.

20 Q The third person was Elaine Karp, former director of  
21 student services. Did you have any conversations  
22 with Elaine Karp prior to January 2014 regarding your  
23 need for an accommodation?

24 A No, not prior to.

25 Q Christine Dieringer is listed as number four. Did

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1           you have any conversations with her prior to January  
2           of 2014 regarding your need for an accommodation?

3   A       Yes.

4   Q       Okay. Do you recall when you might have spoken with  
5           Christine Dieringer?

6   A       Age 15.

7   Q       Okay. All right.

8   A       She -- can we go off the record for a minute -- she  
9           was my principal --

10   Q       Okay. Got you.

11   A       -- at Jackson High School.

12   Q       Okay. Let's narrow it a bit. In your capacity as an  
13           employee of the Massillon City School District.

14   A       Prior, no.

15   Q       Okay. And we've already discussed John Graven, the  
16           fact that he knew prior to January of 2014 of your  
17           need for an accommodation?

18   A       Correct, yes.

19   Q       What about Kris Blair, did she know -- prior to  
20           January of 2014, did you have a conversation with her  
21           about your need for an accommodation?

22   A       No.

23   Q       You would have had a conversation with Jarred  
24           Zapolnik prior to January of 2014 regarding your need  
25           for an accommodation, correct?

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1 A Did I?

2 Q Yes.

3 A No.

4 Q When did he become the principal? Do you recall when  
5 he --

6 A He was starting with the 2014-15 school year.

7 Q Did you have any conversations with Vince Lindsey  
8 before January of 2014?

9 A No. He started the same year as Jarred did.

10 Q What about Jennifer Allerding, did you have any  
11 conversations with her prior to January of 2014?

12 A Yes.

13 Q Do you recall when?

14 A I don't remember exactly. It was when she started.

15 Q And do you recall what you discussed with  
16 Ms. Allerding?

17 A I sat down with her and explained any accommodations  
18 that I needed and the reason for my need for  
19 accommodations.

20 Q And she was the principal of which building at that  
21 time that you spoke to her?

22 A I don't remember.

23 Q Okay.

24 A Because there was a point in time when she was over  
25 both sides of the building --

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1 Q Okay.

2 A -- so I don't --

3 Q When you had a conversation with her prior to January  
4 of 2014 --

5 A Yes.

6 Q -- did she assist you with being provided with any  
7 reasonable accommodations before January 2014?

8 A Yes.

9 Q Okay. And do you recall what those accommodations  
10 were?

11 A Adjustments to arrival and departure times and large  
12 print materials.

13 Q And the last individual you listed in response to  
14 interrogatory number six was Dan McGrath, who was  
15 principal. Did you speak with him prior to January  
16 of 2014 regarding your need for an accommodation?

17 A Yes.

18 Q And do you recall when?

19 A Not exactly. Again, it was when he started.

20 Q Okay. And do you recall what you discussed with  
21 Mr. McGrath?

22 A I discussed my need for accommodations and what those  
23 accommodations were.

24 Q And did Mr. McGrath assist you in being provided with  
25 those accommodations?

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1 A Yes.

2 Q And then also, just to be clear, it also says  
3 additional administrators were not verbally  
4 addressed, but these additional administrators were  
5 also informed via the written accommodation plan of  
6 the need due to Plaintiff's disability for reasonable  
7 accommodations to access printed and written  
8 materials. So you mention other administrators, but  
9 these 10 individuals were the only ones who you  
10 listed specifically.

11 A (Witness nodding head affirmatively.)

12 Q Do you know of any other employee who has requested a  
13 reasonable accommodation from the district?

14 A Yes.

15 Q Okay. How many employees are you aware of who have  
16 requested reasonable accommodations from the  
17 district?

18 MS. WHITE: I'm going to object at this  
19 point. I'm not sure if that's really  
20 relevant. It also kind of digs into other  
21 folks' privacy concerns.

22 MS. MASSEY: Okay. It's noted.

23 Q Do you know how many other individuals have requested  
24 reasonable accommodations from the district?

25 A To my knowledge, one.

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1 Q One.

2 MS. MASSEY: I don't know if this would  
3 be a good time to break.

4 MS. WHITE: I'm ready if you are.

5 MS. MASSEY: Okay, yeah, then I'll  
6 finish up when we get back.

7 - - - -

8 (Thereupon, a luncheon recess was had.)

9 - - - -

10 MS. MASSEY: We're back on the record.

11 Q Now, paragraph 21 of your Complaint states that  
12 "Beginning in January 2014 and continuing to present,  
13 Defendant has failed to provide Plaintiff with  
14 accessible printed and written materials, including  
15 information on workplace policies, staff training  
16 materials and information regarding workplace  
17 evaluations." Now, what is your understanding of  
18 what a reasonable accommodation means?

19 A That it doesn't cause undue hardship to the employer.

20 Q And what was significant about January of 2014? You  
21 say in January 2014 that's when you stopped  
22 consistently, I guess, being provided with accessible  
23 printed and written materials.

24 A The -- so we created an accommodation document that  
25 identified the accommodation being provided, written

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1 materials in accessible format, and after that  
2 document was created, there was occasions in which  
3 documents were not provided in an accessible large  
4 print format for trainings and in-services.

5 Q **So you testified earlier that there was no written or**  
6 **otherwise accommodation plan in place from 2002 to**  
7 **2013, correct?**

8 A Yes.

9 Q **What were the circumstances that led up to an**  
10 **accommodation plan being created in 2014?**

11 A There was a request for a meeting to be -- time to be  
12 adjusted to accommodate my travel restrictions, and  
13 the accommodation that was requested was not granted  
14 and no alternative was offered.

15 Q **You said and no alternative was offered?**

16 A Correct.

17 Q **Now, during this time period in January of 2014, the**  
18 **Board and the AGT were in the midst of negotiations,**  
19 **correct?**

20 A I believe so.

21 Q **Okay. And the meeting time that you were asking to**  
22 **be adjusted, what type of meeting was that?**

23 A That was a meeting between building principals and  
24 the small group teachers at the middle school level  
25 to address an issue regarding schedules.

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1 Q And who did you ask to adjust the meeting time?

2 A The request was made to both Dan McGrath and Jen  
3 Allerding. Dan McGrath was the one that responded.

4 I also, after several communications between  
5 myself and Dan McGrath, I also reached out to Mark  
6 Fortner, but never received a response.

7 Q So in response to this, this issue, did you file a  
8 complaint?

9 A I did.

10 Q Okay. And was the accommodation plan developed as a  
11 result --

12 A Yes.

13 Q -- of your discussions with administration?

14 A Yes.

15 Q Okay. Now, I don't intend to use this as a  
16 document -- as an exhibit, but I provided a copy of a  
17 document to your attorney late yesterday. Do you  
18 remember creating a document about your story that  
19 you provided to the Board of Education at some point,  
20 just kind of giving your perspective on --

21 A Yes.

22 Q And do you recall stating in the document that you  
23 asked, you know, I guess three times a total from  
24 December 2013 to January 2014 for an accommodation,  
25 and you state "However, after being denied the

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1 accommodation on a third attempt by a building  
2 administration and was also ignored by the  
3 superintendent's office, I came to realize that it  
4 wasn't a misunderstanding at all. Instead, I came to  
5 believe that part of the reason for the sudden change  
6 was due to the deterioration of the relationship  
7 between the union and the administration." So do you  
8 believe that in some part you weren't provided with  
9 the accommodation because of something relating to  
10 union and Board negotiations?

11 A I believe that that could be a contributing factor.

12 Q Why?

13 A Because the meeting was based upon a union issue in  
14 which a grievance had been filed.

15 Q Is it safe to say you didn't believe that they were  
16 treating you differently because you were disabled,  
17 correct?

18 A I believe that was also a contributing factor.

19 Q Why?

20 A Because it was an accommodation that had been  
21 provided in the past by administration, and it was  
22 not being provided at that time.

23 Q Why would it be based on your disability if, as you  
24 said, they had been providing you with an  
25 accommodation? You said from 2002 to 2013, you know,

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1           they were providing you with the accommodations as  
2           requested. So why would the change be on the basis  
3           of your disability?

4     A     Well, the reality is I don't know what their reason  
5           was.

6     Q     Now, when did you start keeping track of the  
7           instances when you were not provided with accessible  
8           printed and written materials?

9     A     2014.

10    Q     Do you recall when in 2014?

11    A     No.

12    Q     And why did you start keeping track of the instances  
13           where you weren't provided with accessible printed  
14           and written materials?

15    A     To protect myself.

16    Q     And now, you stated earlier that between 2002 and  
17           2013 you didn't keep track of the instances where you  
18           weren't provided with materials in accessible format.

19    Q     Why would you start doing it in 2014?

20    A     Because it was frequent.

21    Q     And when did it start becoming frequent? What do you  
22           mean by "frequent"?

23    A     It started -- it became frequent I would say as of  
24           May of 2014.

25    Q     In response to interrogatory number 10, we asked you

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1                   for any person identified in answer to interrogatory  
2                   number nine, and that question related to the  
3                   individuals that we asked you to identify any  
4                   employee of Defendant who discriminated against you  
5                   on the basis of your disability, in interrogatory  
6                   number 10 we asked you for the individuals who you  
7                   identified, for you to identify any and all actions  
8                   each took that allegedly discriminated against you on  
9                   the basis of your disability, and in different  
10                  instances you listed the individuals, either, you  
11                  know, administrators failed to ensure that  
12                  administrators were following your accommodation plan  
13                  or failed to respond, and you also listed instances  
14                  where individuals provided you with -- failed to  
15                  provide you with materials, and some of them date  
16                  back to January of 2014. So is it safe to say that  
17                  you started documenting this before May of 2014?

18     A       Not necessarily.

19     Q       Not necessarily?

20     A       I have a pretty good memory.

21     Q       Okay. So when you started documenting in May of  
22                  2014, you went back to the previous months and  
23                  remembered other instances where you weren't  
24                  provided with materials?

25     A       Yes.

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1 Q Now, instead of keeping track of each of these --  
2 instead of keeping track of each of these instances  
3 that you weren't provided with materials, was there  
4 some reason why you just didn't just continue to work  
5 with John Graven on the issue of written and printed  
6 materials?

7 A John Graven retired.

8 Q When did he retire?

9 A I believe it was that spring.

10 Q The spring of?

11 A 2014.

12 Q Okay. But you said that some of these happened -- I  
13 mean, in your response to interrogatories it seems  
14 that some of these instances began to happen as early  
15 as January of 2014. Did you talk to him about your  
16 need for accessible written and printed materials  
17 before -- between the time in January of 2014 and  
18 when he retired?

19 A I do remember one occasion where he and I had a  
20 verbal conversation, and his response to me was  
21 there's a new sheriff in town.

22 Q And when did that conversation take place?

23 A I don't recall.

24 Q Did Mr. Graven attempt to assist you in getting  
25 access to written and printed materials during that

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1                   **time after making that comment?**

2     A        I don't remember. I don't recall any particular  
3                   time, no.

4     Q        **Did you attempt to talk to any other administrators**  
5                   **about providing you with documents in written and**  
6                   **printed accessible form between January and May of**  
7                   **2014, when you started documenting these instances?**

8     A        Yes. I had a conversation with Dan McGrath, and we  
9                   discussed his knowledge of my accommodation plan,  
10                  which he seemed to have no knowledge of.

11                  I spoke to, I believe it was Marcus Simpson --

12     Q        **I'm sorry, what was the name?**

13     A        Marcus Simpson, sorry.

14     Q        **Marcus Simpson.**

15     A        -- and just briefly asked if he was aware of the  
16                  accommodation plan and its contents.

17                  I reached out to James Thom and asked him about  
18                  his knowledge of the accommodation plan.

19                  And that was when I reached out to my attorney  
20                  and Board counsel.

21     Q        **And what was the time frame that you would have had**  
22                  **conversations with Dan McGrath, Marcus Simpson and**  
23                  **James Thom before reaching out to your attorney and**  
24                  **representatives?**

25     A        Within, within a month after the accommodation plan

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1 was created.

2 Q Now, isn't it true that after you filed your  
3 complaint in January of 2014, that the district  
4 engaged in an interactive process with you to develop  
5 an accommodation plan?

6 A Yes.

7 MS. MASSEY: And this is Exhibit 3.  
8 - - - -

9 (Thereupon, Defendant's Exhibit 3 was  
10 marked for identification.)  
11 - - - -

12 Q And I'm also providing you with an enlarged copy of  
13 this one.

14 A Yes; yes.

15 Q And can you identify the document for the record?

16 A This is a summary of the reasonable accommodations  
17 plan.

18 Q Dated February 3, 2014, correct?

19 A Yes.

20 Q Okay. And in this accommodations plan, it suggests,  
21 it says "Reasonable accommodations for the 2013-14  
22 school year and future years," and the district  
23 agreed to provide you with a large screen computer  
24 monitor. And was that provided to you?

25 A Yes.

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1 Q Okay. ZoomText?

2 A Yes.

3 Q That was provided to you --

4 A Yes.

5 Q -- is that correct?

6 And it talks about IT in-service and in-service  
7 involving IT. Was that provided to you as well?

8 A Yes.

9 Q And did you use the ZoomText or another computer  
10 during in-services and trainings?

11 A Yes.

12 Q How often have you used the ZoomText and computer  
13 during in-services and trainings?

14 A Whenever it's needed, so long as it was working  
15 properly. There was an occasion at some point that  
16 it didn't work properly, but every other time.

17 Q There was an occasion when it didn't work properly.

18 Do you recall when that was?

19 A That was prior to the district providing me my own  
20 laptop, because the district would provide me with a  
21 laptop for the in-service and they would put a 30 day  
22 trial of ZoomText on the laptop for me to use at that  
23 particular time.

24 Q Okay. Now, was it helpful for you to have ZoomText  
25 and access to a computer during in-services and

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1           trainings?

2   A       Yes.

3   Q       Is that accommodation currently being provided to  
4           you?

5   A       Yes.

6   Q       And then in number four it says "IT Priority Status -  
7           the district has provided and will continue to have  
8           its IT department place Ms. Poston on priority status  
9           for issues related to Ms. Poston's computer system."

10          Was that accommodation provided to you?

11     A      Yes.

12     Q      And is that still being provided to you?

13     A      Yes.

14     Q      And getting back to number two, is the ZoomText  
15           accommodation still being provided to you?

16     A      Yes.

17     Q      And one, is the large screen computer monitor still  
18           being provided to you as a reasonable accommodation?

19     A      Yes.

20     Q      And then it also talks about the fact that, it says  
21           "Based on Ms. Poston's current disability, Ms. Poston  
22           requested an accommodation of being notified one week  
23           in advance of meetings before or after school to  
24           allow her ample time to secure necessary  
25           transportation." And is that -- was that

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1 accommodation provided?

2 A Yes.

3 Q Okay. And is the accommodation of you being notified  
4 in advance of meetings before or after school to  
5 allow you ample time to secure necessary  
6 transportation still being provided?

7 A Clarification, for what purpose specifically? Are  
8 you speaking of parent-teacher conferences and large  
9 staff meetings?

10 Q When this was drafted, what was your understanding of  
11 what type of meetings this was supposed to apply to,  
12 this accommodation was supposed to apply to?

13 A It was my understanding it was supposed to apply to  
14 parent-teacher conferences and staff meetings.

15 Q Is it your belief that it was not supposed to apply  
16 to IEP meetings?

17 A Correct.

18 Q Was that something that was specifically discussed  
19 with the administration?

20 A No, because it wasn't an issue. IEP meetings were  
21 held within the school day.

22 Q And with respect to parent-teacher conferences, were  
23 there instances where you were -- you had to secure  
24 necessary transportation to get to the parent-teacher  
25 conference?

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1 A Yes.

2 Q And how many times would you say that happened,  
3 between 2014 and to present?

4 A Sixteen.

5 Q And you were provided with ample advance notice in  
6 order to secure necessary transportation on those 16  
7 occasions?

8 A Yes, parent-teacher conferences are placed on the  
9 district calendar at the beginning of the year.

10 Q And what about staff meetings, were there instances  
11 where you needed to secure necessary transportation  
12 in order to attend a staff meeting, either before or  
13 after school?

14 A On occasion.

15 Q On occasion. Were you provided with advance notice  
16 of the need for you to attend the staff meeting so  
17 that you could secure transportation?

18 A Yes.

19 Q And if we look at, maybe it's the next page, it  
20 appears that that provision was slightly modified  
21 concerning the meetings; is that correct?

22 A I'm sorry, your question is? Now that I've read it.

23 Q You all agreed to slightly modify this provision,  
24 correct?

25 A Correct.

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1 Q And has the district complied with this provision  
2 between 2014 to present?

3 A Yes.

4 Q Okay. And sorry, I know that we started off with  
5 number one, the large screen computer monitor, you  
6 stated that the district provided you with this  
7 accommodation and you continue to receive that  
8 accommodation. Has the district complied with the  
9 provision of a large screen computer between 2014 and  
10 present?

11 A Yes.

12 Q Okay. And has the district complied with the  
13 provision of ZoomText between 2014 to present?

14 A Yes.

15 Q And the provision of IT in-service and in-service  
16 involving IT, has the district complied with that  
17 provision from 2014 to present?

18 A I have not had any issues with ZoomText during IT  
19 in-services or trainings.

20 Q Okay. You specifically reference ZoomText. Did you  
21 have an issue with any computer or similar  
22 modifications or IT training or in-services?

23 A No, I had issues with other accommodations.

24 Q Okay. All right. Well, we're just focusing in on  
25 this. So they complied with this?

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1 A Yes.

2 Q And in terms of priority status, the district has  
3 complied with this provision, correct?

4 A Yes.

5 Q Now, if we move to the bullet on page -- it starts  
6 off "Based on Ms. Poston's documented disability and  
7 the accommodations provided, the district suggested  
8 exploring a reasonable accommodation with providing  
9 Ms. Poston with copies of in-service or staff  
10 training materials in certain format." Now, in  
11 January of 2014, is that the -- or February of 2014,  
12 is this the first time that there was some discussion  
13 about 14 font -- point font size in particular? It  
14 says "Ms. Poston explained that she has an easier  
15 time reading font that is 14 font size or greater  
16 when printed materials are used."

17 A That was the first time any kind of font size was  
18 explored.

19 Q And when did you first request that you be provided  
20 with materials in an 18 font size?

21 A I don't recall the date.

22 Q Do you recall the school year?

23 A It wasn't during the school year. It was the summer  
24 of 2014.

25 Q So what happened during the summer of 2014?

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1 A A discussion took place after a negotiation session  
2 between myself, my attorney and the administration  
3 and the Board attorney.

4 Q **And you're saying after this discussion is when you**  
5 **requested that documents be provided in an 18 font**  
6 **size rather than a 14 font size?**

7 A Correct.

8 - - - -

9 (Thereupon, Defendant's Exhibit 4 was  
10 marked for identification.)

11 - - - -

12 Q **Have you seen what's been marked as Number 4 before?**  
13 **It's that one.**

14 A This?

15 Q Um-um.

16 A So there's no large print, just so I understand?

17 Q **That's not the correct -- I'm sorry.**

18 A Is it part of --

19 Q **No, that's a different document. I apologize, I**  
20 **thought that this was the correct size. I enlarged**  
21 **everything else.**

22 MS. WHITE: Nicole, would you prefer  
23 that it be read or --

24 Q **Yeah, I can read the specific provision that I want**  
25 **to ask you about.**

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1 A That would be helpful.

2 Q Okay. On the last page of the document, it says "You  
3 requested the 14 font size to be increased to 18 font  
4 in printed materials administrators provide to you at  
5 school. We all acknowledged the difficulties  
6 encountered in implementing the 14 font size  
7 accommodation last year, which was due to a variety  
8 of factors, including original materials coming in  
9 varied font sizes and difficulty in achieving  
10 uniformity with 14 font size in copying those  
11 materials; practical issues in copying materials,  
12 e.g. enlarging versus increasing percentage to be  
13 copied and unintentionally cutting off parts of the  
14 material. By providing the laptop with ZoomText  
15 software and access to electronic copies of documents  
16 via the shared drive or e-mail, we anticipate you  
17 will be able to view all materials. We anticipate  
18 this should better address the situation and result  
19 in minimal need for printed materials. For those few  
20 occasions, the district has provided you with 11 by  
21 17 paper and use of the copier to make printed copies  
22 you need." Do you remember that provision of this  
23 document entitled Reasonable Accommodations for  
24 2014-2015 School Year?

25 A Yes.

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1 Q Okay. And did the district move forward with making  
2 sure you had a laptop with ZoomText software and  
3 access to electronic copies of documents via the  
4 shared drive or e-mail during the 2014-2015 school  
5 year?

6 A They made sure that I had a laptop with ZoomText.

7 Q Okay. And were you able to review documents that  
8 were provided by administrators during trainings and  
9 meetings by using the laptop with ZoomText software?

10 A No. The issue that was created as a result of that,  
11 which I raised with administration, is that due to  
12 Zoom -- the way ZoomText works, it's difficult to  
13 view more than one document on the computer at a  
14 time.

15 Q And you understand that the -- an employer has an  
16 obligation to provide a reasonable accommodation,  
17 correct?

18 A Yes.

19 Q Okay. And here they suggest that it was very  
20 difficult to increase the font size without losing  
21 some of the information in the materials that were  
22 being provided. Did you have any reason to dispute  
23 that it was difficult for them to always increase  
24 documents from a 14 -- from a smaller font size to 14  
25 point font size?

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1 A Can you rephrase?

2 Q Did you have any reason to dispute the district's  
3 claim that it experienced difficulties when  
4 implementing the 14 font size at times with respect  
5 to documents that were being provided to you?

6 A Yeah, I had reason to dispute that they were stating  
7 that it was not possible.

8 Q They didn't say it was impossible all the time, did  
9 they?

10 A They said it was not possible for a significant  
11 amount of time.

12 Q And why did you dispute that?

13 A Because it is possible, and it had been provided in  
14 the past, so --

15 Q But you said that there were times where it wasn't  
16 provided to you in the past --

17 A Rarely.

18 Q -- between 2002 and 2013.

19 A It was rare that it was not provided. In those cases  
20 it wasn't because they couldn't, it was more a matter  
21 of they just forgot.

22 Q And you don't believe it was reasonable for them to  
23 suggest an alternative method of making sure you had  
24 the materials you needed through the ZoomText  
25 software and the laptop so that you could participate

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1           **in training?**

2   A       It wasn't reasonable because it wasn't effective.

3   Q       **And how was it not effective?**

4   A       Because I couldn't access the documents that I  
5           needed.

6   Q       **Now, you were able to access other documents using  
7           ZoomText software, correct?**

8   A       A single document at a time.

9   Q       **Did you suggest any other alternatives to them, other  
10          than the 14 or 18 font size, when it came to  
11          materials being provided to you during in-services or  
12          trainings?**

13   A       Not specifically, no.

14   Q       **"Not specifically," is that -- I don't understand.**

15   A       Well, I told them that it was acceptable to provide a  
16          PowerPoint presentation, for example, to be accessed  
17          on my computer while I accessed all other documents  
18          in hard copy format, accessible large print format.

19   Q       **And did the district make sure that you had access to  
20          the PowerPoints via computer?**

21   A       Occasionally.

22   Q       Occasionally. What percentage of the time would you  
23          say that they provided it to you, access via  
24          PowerPoint?

25   A       Are we speaking of January 2014 to present?

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1 Q January 2014 to present, yes.

2 A Twenty percent.

3 Q So 20 percent of the time they provided you with

4 access to PowerPoints via computer; is that correct?

5 A Yeah.

6 Q And the other 80 percent of the time what happened?

7 A It was not provided.

8 Q Was it provided at some point after the training?

9 A Most occasions.

10 Q And when it was provided to you after the trainings,

11 were you able to -- were you provided with the

12 opportunity for additional training or the

13 opportunity to speak with individuals about the

14 PowerPoint?

15 A About 50 percent of the time.

16 Q And who offered you those opportunities?

17 A Administration.

18 Q Anyone in particular in administration, or did you

19 deal with different individuals?

20 A More often it was Mr. Fortner, Mark Fortner, but

21 occasionally there were other administrators.

22 Q And did you ever take the school district up on its

23 offer to provide you with additional training or to

24 ask questions concerning the PowerPoints that were

25 provided to you after the training? And again, this

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1           **is between 2014 to present.**

2   A       No, I don't remember.

3   Q       **You don't remember?**

4   A       I don't remember a time when I did.

5   Q       Okay. And in this paragraph it also mentioned that  
6           the district has provided you with 11 by 17 paper and  
7           the use of a copier to make printed copies as you  
8           need it. Has that accommodation been provided  
9           between 2014 and present?

10   A       It was provided from this date forward.

11   Q       **From this date forward, okay. So from October of**  
12           **2014 to present this accommodation has been provided?**

13   A       Correct.

14                            - - - -

15                            (Thereupon, Defendant's Exhibit 5 was  
16                            marked for identification.)

17                            - - - -

18   Q       If you could take a moment to look at that and let me  
19           know once you've had an opportunity to do that.

20   A       Okay. I've read it.

21   Q       And this document is dated October 20, 2015. Do you  
22           recall meeting with the administration to discuss  
23           seven complaints that you had filed related to  
24           documents being provided in an inaccessible format,  
25           or are you saying that they were provided in an

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1                   **inaccessible format?**

2   A       Yes, I remember the meeting.

3   Q       Okay. Now, with respect to the August 18, 2015 IEP  
4                   checklist that was handed out in 14 font size, did  
5                   you speak with anyone in the administration before  
6                   you filed your complaint?

7                   MS. WHITE: I'm going to object to form.

8                   I don't think there is any evidence that it  
9                   was in 14 point font size.

10   Q       Did you speak with your lawyer before you filed your  
11                   complaint to see if you could get the documents in an  
12                   accessible format?

13   A       I'm not sure I understand the question. Can you  
14                   rephrase?

15   Q       Sure. So there was a special ed. meeting with Elaine  
16                   Karp, and there were materials that were handed out,  
17                   an IEP checklist, correct?

18   A       Correct.

19   Q       Okay. And you claimed that the document was not  
20                   provided in an accessible format, correct?

21   A       Correct.

22   Q       Did you speak with either Ms. Karp or any  
23                   administrator about receiving that checklist in an  
24                   accessible format before you filed a complaint?

25   A       I believe that there was a conversation that occurred

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1                   between the date of this incident and when I filed  
2                   the complaint.

3   Q       So it looks like the incident happened on August 18,  
4                   2015, and you filed a complaint on September 6, 2015.  
5                   Did you have a meeting -- did you ask for someone to  
6                   provide you with the documents in an accessible  
7                   format between August 18th and September 6th?

8   A       I just remember that I had a conversation in which I  
9                   told them that it wasn't an accessible format.

10   Q       And by "an accessible format," it says here large  
11                   print 18 font size. Is that what you were talking  
12                   about?

13   A       Correct.

14   Q       And it says that "Elaine stated that she handed out  
15                   IEP Checklist in 14 size font," and I know your  
16                   attorney has already objected as to whether that  
17                   happened or not, but do you have any reason to  
18                   dispute that it wasn't in a 14 size font?

19   A       I can't say that it was in a 14 font.

20   Q       And then with respect to number two, in the complaint  
21                   it states "August 18, 2015: Building-wide Staff  
22                   Meeting at MIS/MJHS at 10:00 A.M. Presentation was  
23                   not made accessible and handout was not in large  
24                   print 18 font, but received same as everyone else."  
25                   Did you speak with someone in between August 18, 2015

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1 and September 6th of 2015 to ask for the materials to  
2 be provided to you in an accessible format before  
3 filing your complaint?

4 A I don't recall.

5 Q And in Exhibit Number 5, point bullet two, it says  
6 the Massillon Junior High School administration  
7 stated that the handout was in 14 size font. Do you  
8 have any reason to dispute that it wasn't provided in  
9 14 size font?

10 A I can't say that it was in 14 font.

11 Q Number three, the next complaint, it relates to  
12 something that happened on August 19, 2015, it was a  
13 PD session by Brian McNulty, you stated that  
14 PowerPoint presentation not accessible, handout was  
15 not in large print, administration has been asked  
16 repeatedly to provide documents at PD sessions in  
17 accessible large print format. Did you speak with  
18 anyone between August 19, 2015 and September 6th to  
19 ask that the documents be provided in an accessible  
20 format before filing your complaint?

21 A I don't recall.

22 Q Okay. And it states in there that MJHS  
23 administration stated that handout was in 14 size  
24 font. Do you have any reason to dispute that it was  
25 not provided in a 14 size front?

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1 A I can't say that it was in 14 font.

2 Q Number four relates to August 19, 2015 and PD session  
3 by SST9. Do you recall that particular complaint?

4 A Yes.

5 Q Okay. And did you speak with anyone in  
6 administration between August 19, 2015 and  
7 September 6, 2015 and ask them to provide you with  
8 documents in an accessible format before filing your  
9 complaint?

10 A I can't say that I did or didn't.

11 Q And again, it says the "MJHS administration stated  
12 that building data handout was in 14 size font." Do  
13 you have any reason to dispute that it was provided  
14 in 14 size font?

15 A I can't say that it was provided in 14 font.

16 Q And number five, there was a PD session educating for  
17 all presented by Kris Blair, you said that "No  
18 presentation materials were provided in accessible  
19 format, large print 18 font. Administration has been  
20 repeatedly asked to provide PD materials in an  
21 accessible large print format." Same question, did  
22 you speak with anyone between August 19, 2015 and  
23 September 6, 2015 to ask them to provide you with the  
24 documents in an accessible format before filing your  
25 complaint?

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1 A I can't say that I did or didn't.

2 Q You can't say that you did or didn't?

3 A Correct.

4 Q Meaning you don't recall?

5 A I don't recall.

6 Q Okay. And it states here that "Blair stated that  
7 there were no handouts." Do you have any reason to  
8 dispute that there were no handouts even provided  
9 during that PD session?

10 A I can't say.

11 Q Okay. And number six, August 20, 2015, it talks  
12 about forms to be filled out were put in mailbox,  
13 they were contact information, medical emergency and  
14 sunshine committee forms, were the same forms  
15 everyone else received and were not in accessible  
16 format, large print. Administration was told only  
17 forms mailed home could be regular size for print.  
18 When you asked for an accommodation in terms of  
19 printed materials being provided in an accessible  
20 format, was it primarily related to meetings and  
21 professional development and in-service trainings?

22 A Primarily.

23 Q Okay. So the fact that contact information, medical  
24 emergency and sunshine committee forms weren't  
25 provided in large font, is that -- do you believe

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1                   that that's covered by the accommodation plan?

2   A       Yes.

3   Q       Was that discussed?

4   A       Yes.

5   Q       And who did you discuss the fact that these type of  
6                   documents would be provided in an accessible format  
7                   with?

8   A       Mr. Fortner.

9   Q       But is it correct that forms that are mailed home do  
10                  not have to be in an increased size font?

11   A       Yes.

12   Q       And in between August 20th of 2015 and September 6,  
13                  2015, did you ask for someone to provide these  
14                  documents to you in an accessible format?

15   A       I don't recall.

16   Q       And then lastly, August 31st, the Staff Education  
17                  Technology Acceptable Use and Safety Agreement you  
18                  stated was put in your mailbox in regular size font,  
19                  not large 18 font, it was in the same format as all  
20                  other staff received. Did you speak with anyone  
21                  between August 31st and September 6th about the need  
22                  for this documentation before filing your complaint?

23   A       Not -- I don't recall.

24

- - - -

25                   (Thereupon, Defendant's Exhibit 6 was

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1 marked for identification.)

---

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2 - - - -

3 Q If you could take a moment to take a look at what's  
4 been marked as Exhibit 6. I'm sorry, I'm going to  
5 give you the Bates stamped one.

MS. WHITE: Are you able to review?

9 Q It's a different font, so that may be, but I blew it  
10 up as large as possible.

11 A I have a general idea of what this is.

12 Q This was a document provided to you and your counsel,  
13 Kathleen McKinley, from Nicole Donovsky, who was  
14 designated as the compliance officer for the  
15 Massillon City School District related to the seven  
16 complaints we just discussed, and it's dated  
17 December 14, 2015. Did you have an opportunity to  
18 meet with the administration in relation to your  
19 complaints before this document was issued in  
20 December of 2015?

21 A Are you speaking of the seven complaints?

22 Q Yes; yes, the seven complaints.

23 A Yes, we met on the -- it's identified somewhere.

24 Q So you met on the 20th?

25 A Yeah, the 20th.

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1 Q And was Ms. Donovsky present during that meeting?

2 A No.

3 Q Did you at some point --

4 A It was Mr. Compton, Fred Compton.

5 Q Oh, Fred Compton, okay, not Rick Ross?

6 A Nope, Fred Compton.

7 Q And was Fred Compton reviewing the complaint on  
8 behalf of the district, do you know?

9 A Yeah, he was representing the district at that moment  
10 in time, he had replaced Sarah Moore.

11 Q Now, in the conclusion, Ms. Donovsky states in "Some  
12 instances where accommodations were not provided may  
13 be attributed to a lack of understanding of the  
14 accommodation by the person/people responsible for  
15 providing the documentation, lack of communication or  
16 lack of time or control." Did you have any reason to  
17 dispute that those may have been some of the things  
18 that led to documents not being provided in an  
19 accessible format?

20 A I dispute it on some level, yes.

21 Q And what did you dispute? What is it that you  
22 disputed?

23 A That there was lack of understanding for what was  
24 expected in terms of the accommodations.

25 Q You don't think that there was a lack of

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1 understanding with respect to whether it should be 14  
2 size font or 18 size font?

3 A No, I don't think there should have been lack of  
4 understanding in regards to that.

5 Q But earlier that year the district noted that it was  
6 very difficult to provide documents in 14 size font  
7 and would be even more difficult to provide documents  
8 in 18 size font.

9 A And I disputed that as well, that it was more  
10 difficult.

11 Q Ms. Donovsky also states "I will note that Ms. Poston  
12 did not request assistance or take any immediate  
13 action to notify administration of the failure to  
14 accommodate her until she filed her complaints." Any  
15 reason to dispute that conclusion reached by  
16 Ms. Donovsky?

17 A Well, yes, because she's also discussing complaint  
18 number 13 as well in this disposition, and at that  
19 point there had been numerous discussions that had  
20 occurred as a result of the initial seven complaints,  
21 so --

22 Q So if you take complaint 13 out, then it is true that  
23 you didn't request assistance or take any --

24 A I can't say whether I did or didn't.

25 Q Okay. Wouldn't you agree that if you did immediately

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1           **notify the administration of the fact that the**  
2           **documents weren't provided in an accessible format,**  
3           **that they could have tried to quickly resolve the**  
4           **issue?**

5   A       I dispute that.

6   Q       **You dispute that why?**

7   A       Because in most of the cases in which they were  
8       meetings or in-services, they were not in a position  
9       to be able to immediately address the issue.

10   Q       **But if you would have notified them afterwards, you**  
11      **don't -- wouldn't they have attempted to try and get**  
12      **the documents to you in an accessible format?**

13   A       That was after the fact.

14   Q       **But isn't the point to make sure that you are able to**  
15      **have the documents in an accessible format at some**  
16      **point, even if they're not provided during the actual**  
17      **in-service or training?**

18   A       Eventually, yes. And by October they were well aware  
19      of it, if not before.

20            - - - -

21            (Thereupon, Defendant's Exhibit 7 was  
22            marked for identification.)

23            - - - -

24   Q       **This is 7. Take a moment to look at that.**

25            **I've handed you what's been marked as Exhibit 7,**

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which is an accommodation plan dated January 18,  
2017. And if I could have you take a look at under  
Training/Accommodations, number one, and it states  
"Ms. Poston will notify the assistant superintendent  
or designee within 24 hours of in-service/trainings  
that the accommodations contained herein were not  
provided. The assistant superintendent or designee  
will arrange follow-up provisions to provide any  
required information from meetings, in-services or  
trainings not provided at that time." Did you -- and  
you agreed to this provision, correct?

12 A Correct.

13 Q Okay. And what is your understanding of this  
14 particular paragraph one under  
15 Training/Accommodations?

16 A That if an accommodation isn't provided, that I'm to  
17 notify Mr. Fortner.

18 Q And as an educator, you would agree that educators  
19 are required to review several documents on a daily  
20 basis, correct?

21 A I guess, yeah.

22 Q Okay. And as an educator, you attend quite a few  
23 meetings throughout the year; is that correct?

24 A Yes.

25 Q Okay. And you also attend training and professional

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1 development frequently throughout the year, correct?

2 A Yes.

3 Q Now, you would agree that this paragraph is intended  
4 to deal with instances where the district  
5 inadvertently or mistakenly neglects to give you  
6 documents in an accessible format during training or  
7 professional development, correct?

8 A Yes.

9 Q Okay. And you would also agree that it's designed to  
10 ensure that you notify the district as soon as  
11 possible concerning the fact that you were not  
12 provided an accessible format, correct?

13 A Correct.

14 Q And isn't this provision also designed to ensure that  
15 once you notify the district, it will provide you or  
16 ensure that you're provided with a document, correct?

17 A That's the intent.

18 Q Now, when you have notified Mr. Fortner that you  
19 didn't receive materials during professional  
20 development or training, he asked you if you needed  
21 the documents in an accessible format, correct?

22 A On most --

23 MS. WHITE: Can I object here? Can we  
24 clarify what time period we're talking about?  
25 We're talking about an accommodation plan

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1                         signed in January 2017, but we were also just  
2                         discussing events that happened two years  
3                         previous.

4                         MS. MASSEY: Yes.

5                         MS. WHITE: Okay.

6                         MS. MASSEY: So I'm asking questions  
7                         about -- it can only apply to 2017, because  
8                         that's when this provision was signed. So we  
9                         can clarify for the record I'm asking about  
10                         after this agreement was signed.

11           Q     And the only reason why I'm asking, there are times  
12                 in your responses to interrogatories that you  
13                 reference dates in 2017 that you weren't provided  
14                 with documents.

15           A     Correct.

16           Q     Okay. So back to my question. When you notified --  
17                 I don't know if it was answered or not, but when you  
18                 notified Mr. Fortner that you didn't receive  
19                 materials during professional development or  
20                 training, he asked you if you needed the documents in  
21                 an accessible format; is that correct?

22           A     Yes.

23           Q     Okay. And in those instances where you advised  
24                 Mr. Fortner that you did need the documents, he asked  
25                 you if you needed any training or any other meetings

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1           **in addition to the document, correct?**

2   A       On most occasions.

3   Q       **And would you agree that the district wants to make**  
4            **sure that if you're not provided with a document**  
5            **during training or professional development, that you**  
6            **still have the opportunity to benefit from the**  
7            **information contained in the document through**  
8            **additional training, correct?**

9   A       Can you rephrase?

10   Q       **You would agree that the district wants to make sure**  
11           **that if you're not provided with a document during**  
12           **training or professional development, that you still**  
13           **have the opportunity to benefit from the information**  
14           **contained in the document through additional**  
15           **training, if necessary, correct?**

16   A       I think that's their intent, but I would dispute it.

17   Q       **Okay. And why would you dispute it?**

18   A       Because there are times in which if the documents are  
19           provided after the fact, that the benefit cannot be  
20           gained from them when they are provided after the  
21           fact.

22   Q       **So just by analogy, if a student misses school and**  
23           **documents are provided to him or her after their**  
24           **absence, they can't -- wouldn't they be able to still**  
25           **benefit from the document and the information if they**

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1           get some additional assistance with respect to the  
2           document?

3   A       Not if the instruction was structured in a way in  
4           which conversations and interactions occurred within  
5           the classroom that they needed in order to understand  
6           the materials that were provided to them at a later  
7           time.

8   Q       But you're actually present for those conversations  
9           that are happening during the trainings where these  
10          materials are being provided, correct? So even  
11          though you don't have the document, you're still  
12          hearing the conversation and understand what the  
13          individuals are talking about, correct?

14   A       But the connection can't be made, because if you  
15          don't have the document with you, the connection  
16          can't be made by what is actually being stated.

17   Q       Okay. So give me an instance where a document wasn't  
18          handed out to you during a presentation and it was  
19          provided to you afterwards along with an offered  
20          training, and you determined that it was not going to  
21          be beneficial to have any additional training or  
22          meeting regarding the document.

23   A       There was -- I'm trying to think of the best example,  
24          because there were several.

25           There was a training recently on youth mental

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1           health, and a document was given in regular font and  
2           which all participants individually were to complete  
3           the document, and then that document was then used to  
4           have discussions and both in groups and then as an  
5           entire group, so small groups and then large group,  
6           and further information was provided as a result of  
7           the information that the individuals had put on that  
8           form, and there was, like, connections made between  
9           what was being discussed in the groups, both in small  
10          group and in large group, in relation to what  
11          individuals had put on their forms.

12       Q     **So it's your testimony you were not able to follow**  
13           **along at all during those discussions in the small**  
14           **and larger groups?**

15       A     Correct.

16       Q     **And it's your testimony that after being provided**  
17           **with the document in an accessible format and having**  
18           **the opportunity to meet with the individual who**  
19           **presented that paperwork, you still wouldn't have**  
20           **benefited from having that document and having a**  
21           **discussion with that individual?**

22       A     Correct.

23       Q     **That's your determination, though, correct?**

24       A     Yes.

25       Q     **Do you believe it's a reasonable accommodation for**

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1                   them to try to offer you those materials after, if  
2                   they haven't been provided to you during the  
3                   professional development or training?

4   A           No.

5   Q           So you're saying there is no instance in which having  
6                   a document following a training is going to benefit  
7                   you in any way?

8   A           There are occasions where it could benefit me.

9   Q           Okay. And there are occasions where being able to  
10                  have additional training or a meeting related to the  
11                  document will be able to benefit you, correct?

12   A           It would be better than nothing at all.

13   Q           So that's yes?

14   A           It doesn't measure to the reasonable accommodation of  
15                  being provided the documents at the actual training.

16                   MS. MASSEY: If we can take a quick  
17                  break, and then I'm not going to be much  
18                  longer after this.

19                   - - - -

20                   (Thereupon, a recess was had.)

21                   - - - -

22   Q           Now, in interrogatory number eight, we asked you to  
23                  identify the persons who failed to take reasonable  
24                  steps to ensure that effective accommodations are  
25                  provided to Plaintiff as alleged in paragraphs 92,

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1           **105, 115, between January 2014 through present. In**  
2           **addition to listing the names of 18 employees, you**  
3           **listed the names of the following Board members, Liz**  
4           **Hersher, John Paquelet -- do you know if that's how**  
5           **you pronounce his name?**

6     A       I believe it's appropriate.

7     Q       **-- Ron Pribich or Pribich, Tom Radel, and Mary**  
8           **Strukel. How did the Board fail to take reasonable**  
9           **steps to ensure that you had effective -- that**  
10          **effective accommodations were provided to you?**

11    A       I appealed my complaints to the Board of Education,  
12          and held -- had a meeting with them in executive  
13          session and asked that they address my concerns with  
14          regards to accommodations not being provided.

15    Q       **And you had the opportunity to address them in**  
16          **executive session during a meeting?**

17    A       Yes.

18    Q       **And after that, was an accommodation plan developed,**  
19          **or a revised accommodation plan developed as a result**  
20          **following your meeting with the Board?**

21    A       There was an accommodation meeting that happened  
22          after the Board meeting. Whether there was a  
23          connection between the two, I don't know.

24    Q       **And what, if any, has been the Board of Education's**  
25          **direct involvement in the alleged discrimination**

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1                   **against you on the basis of your disability?**

2                   - - - -

3                   (Thereupon, an interruption was had.)

4                   - - - -

5   A     Can you repeat the question, please?

6   Q     **Yes. What, if any, has been the Board of Education's**  
7                   **direct involvement in the alleged discrimination**  
8                   **against you on the basis of your disability?**

9   A     There wasn't direct discrimination by the Board.

10   Q     **And earlier I asked you questions about instances**  
11                   **where you were not provided with documents during**  
12                   **professional development or training. Now, the**  
13                   **failure -- the fact that you didn't receive those**  
14                   **documents during the professional development or**  
15                   **training did not impact your ability to perform the**  
16                   **essential functions of your position, correct?**

17   A     I can't say that they didn't impact my ability to do  
18                   the essential functions of my job.

19   Q     **You can't say that they didn't impact your ability to**  
20                   **perform the essential functions of your job, is that**  
21                   **what you said?**

22   A     Correct.

23   Q     **You stated that you have received good evaluations,**  
24                   **accomplished, correct?**

25   A     I did receive a good evaluation of accomplished.

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1 Q Okay. Are you able to still effectively perform your  
2 duties and provide services to students even when you  
3 don't get documents in an accessible format during  
4 professional development and training?

5 A I don't always have the information or training to  
6 provide services in the manner in which the  
7 administration would like me to provide the  
8 instruction and services to students.

9 Q Has an administrator told you that you've been unable  
10 to provide services in the manner that they would  
11 like to students because you didn't get a document  
12 during professional development or in-service  
13 training?

14 A I don't recall a specific conversation --

15 Q Has an administrator -- sorry.

16 A -- that an administrator has stated that directly.

17 Q Has an administrator, between 2014 and 2017, ever  
18 stated that you didn't effectively perform your  
19 duties?

20 A Not that I recall.

21 Q Now, in response to the request for production of  
22 documents, you provided us with some -- your attorney  
23 provided us with some medical documentation, and  
24 related to just some of the medical issues that  
25 you've experienced allegedly since -- between 2014

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1           and now. Did you have a previous history of stress  
2           before 2014?

3   A       No.

4   Q       Previous anxiety before 2014?

5   A       No.

6   Q       Lack of sleep before 2014?

7   A       On occasion.

8   Q       Stomach problems before 2014?

9   A       No.

10   Q       And depression before 2014?

11   A       No.

12   Q       And in response to interrogatory number 17, you  
13       stated that you've received treatment from Doctor  
14       David Gannon and Doctor Richard Lehrer and Doctor  
15       Patrick McFeely. And it says Doctor David Gannon,  
16       individual psychotherapy for stress and anxiety. Did  
17       you see Doctor David Gannon before 2014?

18   A       No.

19   Q       When was the first time you saw Doctor David Gannon?

20   A       November of 2016.

21   Q       And you also stated that you saw Doctor Patrick  
22       McFeely, and the diagnosis was fibromyalgia. When  
23       were you first diagnosed with fibromyalgia?

24   A       I don't recall the year that I was diagnosed, but  
25       it's been quite a few years.

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- 1 Q Was it before 2014?
- 2 A Oh, yeah, way before.
- 3 Q And it says that you were treated for illness, acid
- 4 reflux, stress and anxiety; is that correct?
- 5 A Yeah.
- 6 Q And that's related to your fibromyalgia, correct?
- 7 A No, not all of those are related to my fibromyalgia.
- 8 Q It says "illness." Is that related to your
- 9 fibromyalgia?
- 10 A It's interrelated, yes.
- 11 Q Acid reflux, is that related to your fibromyalgia?
- 12 A No.
- 13 Q So do you see Doctor Patrick McFeely for just acid
- 14 reflux?
- 15 A It's stress induced.
- 16 Q Is the stress and anxiety related to your
- 17 fibromyalgia, is that a part of the diagnosis?
- 18 A Stress is a trigger of fibromyalgia.
- 19 Q Which you've had, like you said, for some time,
- 20 correct?
- 21 A Yes, the diagnosis I've had.
- 22 Q Okay. And how often would you say you've seen Doctor
- 23 McFeely between January of 2014 and December of 2016
- 24 for your fibromyalgia?
- 25 A Biweekly.

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1 Q Did you see him biweekly before January 2014?

2 A Not consistently.

3 Q There were times you saw him biweekly before January  
4 of 2014?

5 A There might have been an occasion where I saw him  
6 biweekly, but it was dependent upon the symptoms.

7 Q Okay. On average, how often do you say you would  
8 have seen him before 2014?

9 A Once a month.

10 Q And then also you've seen Doctor Richard Lehrer for  
11 dry eyes. Did that exist before January 2014, the  
12 dry eyes?

13 A No.

14 Q And how often have you seen Doctor Lehrer for dry  
15 eyes since January 2014?

16 A I can't say. I don't know.

17 Q Did you see any physician for dry eyes before  
18 January 2014?

19 A I don't recall seeing anybody for dry eyes.

20 Q Are you still treating with Doctor David Gannon?

21 A Yes.

22 Q Are you still treating with Doctor Patrick McFeely?

23 A Yes.

24 Q And what about Doctor Richard Lehrer, are you still  
25 treating with him?

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1 A Yes.

2 Q And have you been prescribed medication by Doctor  
3 Gannon for the stress and anxiety?

4 A No, not directly.

5 Q Prior to January of 2014, have you treated with a  
6 psychiatrist at all?

7 A Not in the context that you're speaking of.

8 Q I'm not speaking in any context. I'm just asking you  
9 a straight question. Have you treated --

10 A At the age of nine I saw a psychotherapist on two  
11 occasions for not being able to swallow food  
12 properly. My parents were concerned. They took me  
13 for two sessions with a psychiatrist, who then told  
14 them that I was perfectly fine and it would go away  
15 on its own, and after those two occasions I never  
16 went back.

17 Q Okay. What about a psychologist at all?

18 A No.

19 Q And did you treat with any doctors for stress and  
20 anxiety before January of 2014?

21 A No.

22 Q Now, we asked you a question about damages, and it  
23 says that you have incurred medical expenses in the  
24 amount of \$10,886.75. Aren't you covered by the  
25 Board's health insurance?

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1 A I am.

2 Q Okay. Now, is the \$10,886.75 out-of-pocket expenses  
3 you've incurred?

4 A Correct.

5 Q And do you have any reason to know why these costs  
6 were not covered by your health insurance?

7 A Some of the treatments are not covered by the  
8 insurance.

9 Q Do those treatments include the acupuncture?

10 A Yes.

11 Q And massotherapy?

12 A Yes.

13 Q Any other types of treatments you are aware of that  
14 aren't covered by your health insurance that you've  
15 received? It says diet and medication as well.

16 A There are portions of like a doctor's visit or, you  
17 know, my psychotherapy appointments that are not  
18 covered by the insurance that are my responsibility  
19 out-of-pocket, they're not fully covered.

20 Q At this point I don't have any other questions for  
21 you, but I will reserve the right if we have any  
22 other documents or depending on Mr. Fortner's  
23 decision, I'll reserve the right to recall you.

24 MS. WHITE: I just have a few clarifying  
25 questions.

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1 EXAMINATION OF

2 NICOLE M. POSTON

3 BY MS. WHITE:

4 Q If you could pull out Exhibit Number 3, which has  
5 been marked as Defendant's Exhibit Number 3.

6 Hopefully the accessible version. It's labeled  
7 February 3, 2014 at the top.

8 A Okay. Found it.

9 Q You had previously identified this as the February 3,  
10 2014 accommodations plan; is that correct?

11 A Yes.

12 Q Okay. I'd like to direct your attention to the  
13 second to last paragraph from the bottom, this is the  
14 other side, on the end.

15 A I'm looking at the front page or end?

16 Q I'm going to read the section, let me know if I've  
17 got this right. "In the future, should there be a  
18 need to review any of these accommodations or  
19 potential other accommodations, please contact me to  
20 set up another interactive process meeting so we can  
21 explore the matter;" is that correct?

22 A That's correct.

23 Q So what was your understanding at the end of the  
24 February 3, 2014 meeting about how firm this  
25 accommodations plan was?

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1 A It was my understanding that it was a document that  
2 could be changed at any time through the interactive  
3 process.

4 Q Okay. And one of the accommodations that was in here  
5 was an accommodation related to font size; is that  
6 right?

7 A Correct.

8 Q Did that font size of 14 point or greater, was that  
9 an effective accommodation for you?

10 A No.

11 Q Did you in fact request an additional interactive  
12 process to review that accommodation?

13 A Yes.

14 Q Okay. And what did you request?

15 A I requested that we hold another interactive meeting  
16 to discuss changes that needed to be made to  
17 accommodations that I felt were not effective.

18 Q Was there a specific accommodation that you requested  
19 instead of 14 point?

20 A I requested that materials be provided in at least 18  
21 point font or greater.

22 Q And did the district agree to that request?

23 A They attempted to provide an alternative  
24 accommodation of providing documents just through the  
25 computer.

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1 Q Was that alternative accommodation that the district  
2 provided effective for you?

3 A No.

4 Q Why was it not effective?

5 A Because of the computer software, it is not -- I'm  
6 not able to view multiple documents on the computer  
7 screen at the same time effectively.

8 Q These meetings where you were hoping to view multiple  
9 documents, were other employees at these trainings  
10 and in-services reviewing multiple documents at the  
11 same time?

12 A Yes.

13 Q Was that part of the training experience for those  
14 trainings?

15 A Yes.

16 Q How often, like what percentage of trainings do you  
17 think involved viewing more than one document at  
18 once?

19 A Ninety-five percent.

20 Q Okay. If you could bear with me just a second, I'm  
21 going to gather some exhibits here. If you can put  
22 that one aside. If you can get Exhibit 5 again.

23 A Can you give me some context of --

24 Q It says meeting date of October 20, 2015.

25 A Okay.

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1 Q So we were discussing a number of internal complaints  
2 that you had filed on September 9, 2015; is that  
3 correct?

4 A Yes.

5 Q And you filed internal complaints on the 9th of  
6 September 2015, but these involved incidents that  
7 occurred on the 18th or 19th or 20th or 31st of  
8 August; is that correct?

9 A Yes.

10 MS. MASSEY: I'm just going to object to  
11 the extent it's a leading question. I'm just  
12 going to object for the record. Thank you.

13 Q All right. I believe you testified earlier that --  
14 you were asked several times whether you had made any  
15 other objection or complaint about lack of  
16 accommodations prior to your formal complaint on the  
17 9th of September; is that right?

18 A Correct.

19 Q I'm going to hand you -- and sorry, and you responded  
20 that you couldn't recall?

21 A Correct.

22 MS. MASSEY: Objection. I'm not sure  
23 what you're talking about.

24 Q Okay. I'm going to hand you what I'm going to mark  
25 as Plaintiff's Exhibit Number 1.

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1 MS. MASSEY: Okay. But you said the  
2 question I asked her whether she had filed  
3 any other complaints before October, before  
4 then?

5 MS. WHITE: My question was whether she  
6 had, she had addressed the lack of  
7 accommodations immediately after that meeting  
8 prior to the written complaint.

9 MS. MASSEY: I didn't hear that.

10 MS. WHITE: Well, let me clarify, then.

11 Q Let me just back up a second and mark this as  
12 Plaintiff's Exhibit Number 1 and ask you to take a  
13 look and identify it and then we'll go through it.

14 - - - -

15 (Thereupon, Plaintiff's Exhibit 1 was  
16 marked for identification.)

17 - - - -

18 Q If you could take a look at this and let me know when  
19 you're ready.

20 Do you recognize this document?

21 A Yes.

22 Q So what is this document?

23 A An interaction between myself and Mr. Fortner  
24 regarding my request to engage in the interactive  
25 process about accommodations, that I had a concern

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1           that I was not being provided accommodations and so I  
2           wanted to engage in that interactive process to  
3           address the issues.

4   Q       **And what date is Mr. Fortner's letter?**

5   A       September 2, 2013 -- or, '15. I'm sorry, '13.

6   Q       **And what date had you contacted Mr. Fortner? Was it**  
7           **August 26th? Yeah, was it August 26, 2015?**

8   A       I believe, yes.

9   Q       Okay. And this was concerning a number of trainings  
10          at the convocation on the 18th and 19th of 2015; is  
11          that right?

12   A       Yes.

13   Q       So you contacted him within seven or eight days of  
14          that convocation; is that right?

15   A       Correct.

16   Q       And he contacted you about a week later regarding  
17          your request for a meeting; is that right?

18   A       That's correct.

19   Q       And he didn't ask you in this e-mail to file a formal  
20          complaint at that time, did he?

21   A       I don't believe so.

22   Q       Okay. But you did in fact file seven internal  
23          complaints on September 9, 2015; is that right?

24   A       Yes.

25   Q       Okay. Could you tell me a little bit more about the

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1           **convocation trainings? What do they involve? How**  
2           **are they structured?**

3   A       Are you speaking of a particular one, or --

4   Q       **Let's talk about August 2015. What kind of training**  
5           **was this? Who offered it? Who was it for?**

6   A       After convocation, the SPED meeting with Elaine Karp,  
7           is that what you're referring to?

8   Q       **That wasn't the only meeting that day; is that right?**

9   A       That's correct, that was the first meeting.

10   Q       **How many meetings are there at a convocation?**

11   A       It varies, depending on which year, but this  
12           particular meeting, we had, we had two.

13   Q       **And who are the presenters at these trainings; are**  
14           **they internal or external presenters usually?**

15   A       Internal most of the time.

16   Q       **Do you sometimes have outside trainers as well?**

17   A       Occasionally.

18   Q       **And what are the general sort of topics that come up**  
19           **at these convocation trainings?**

20   A       The trainings that occur at the district level are  
21           often related to district data, or in this case with  
22           Elaine Karp it was specifically addressing special  
23           ed. staff in the district, and information about,  
24           important information that had to be shared with  
25           special ed. staff for them to know procedures and

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1                   protocols that were necessary to start the year. At  
2                   the building level they're typically information  
3                   related to procedures, protocols, expectations for  
4                   staff at that building level, and also reviewing  
5                   building level data.

6   Q   **Did all small group teachers get the opportunity to**  
7                   **participate in these trainings?**

8   A   Yes.

9   Q   **Were they required to participate in these trainings?**

10   A   Yes.

11   Q   **Were these trainings useful to your work?**

12   A   Yes.

13   Q   **Were these trainings essential to your work?**

14   A   Yes.

15   Q   **Now, we had a number of questions about the items**  
16                   **that are on this particular list, Exhibit 5. I'd**  
17                   **like to direct your attention to item number four,**  
18                   **which is labeled August 19, 2015: PD session by**  
19                   **SST9.**

20   A   Yes.

21   Q   **And did you attend that session?**

22   A   Yes.

23   Q   **What is SST9?**

24   A   It stands for State Support Team Number 9, which  
25                   oversees several counties, I believe.

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1 Q And so correct me if I'm wrong, that's a state entity  
2 that provides training on special education topics to  
3 educators; is that correct?

4 A Yes.

5 Q Okay.

6 MS. MASSEY: Objection.

7 Q I'm going to mark this as Plaintiff's Exhibit Number  
8 2.

9 - - - -

10 (Thereupon, Plaintiff's Exhibit 2 was  
11 marked for identification.)

12 - - - -

13 Q I'm going to ask you to take a look at this item that  
14 has been marked Plaintiff's Exhibit 2. Let me know  
15 when you've had a chance to sort of look through it.

16 Can you identify the document that is marked  
17 Plaintiff's Exhibit 2?

18 A This was the presentation that was provided at that  
19 SST9 training, PD.

20 Q Did you get a copy of this in advance?

21 A No.

22 Q Did you get an electronic copy of this presentation  
23 in advance?

24 A No.

25 Q Is this a PowerPoint presentation?

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1 A Yes.

2 Q Is this the format in which you received this  
3 document?

4 A Yes.

5 Q And were you able to effectively read and access the  
6 information in this document during the training?

7 A No.

8 Q Are you able to effectively read this document now?

9 A No.

10 Q And are any portions of this document that contain  
11 written materials, are any portions of it in size 14  
12 font?

13 A No.

14 Q Are any portions in 18 font?

15 A No.

16 Q And going back to Exhibit 5, you didn't create this  
17 document, did you?

18 A No.

19 Q And do you agree with the statement MJHS admin stated  
20 that -- sorry, stated that building data handout was  
21 in 14 size font?

22 A No.

23 Q All right. All right. I'm going to hand you what  
24 Plaintiff's Exhibit 3.

25 - - - -

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(Thereupon, Plaintiff's Exhibit 3 was  
marked for identification.)

3 - - - -

5 A Yes, this is the PBIS handbook for the 2015-16 school  
6 year.

7 Q When, if you recall, and how did you receive this  
8 document?

9 A It was provided at the staff meeting that occurred at  
10 the building level.

11 Q Is this a true and accurate copy of the materials  
12 that you received as you received them at that  
13 meeting?

14 A Yes.

15 Q And are you able to effectively read all of the  
16 material in this handbook?

17 A No.

18 Q And you were present at that meeting, though; is that  
19 right?

20 A Yes.

21 Q And could you tell me your understanding of what kind  
22 of information is in the school handbook?

23 A This handbook involves the information about all the  
24 PBIS information that teachers need to know,  
25 including expectations of students, teachers,

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1 resources for teachers, protocol, the behavior charts  
2 that are being used to -- in different places within  
3 the building to address student behavior.

4 Q **Was this handbook discussed during the meeting?**

5 A Yes.

6 Q **Who were the presenters at that particular meeting**  
7 **where this was discussed?**

8 A The principals.

9 Q **Was your principal one of the presenters?**

10 A Yes.

11 Q **Were these presenters aware of your accommodations**  
12 **plan?**

13 A Yes.

14 Q **And were you provided this material in advance?**

15 A No.

16 Q **And were you provided it in an accessible format?**

17 A Nope.

18 Q **So earlier on you testified that your eyes can become**  
19 **fatigued and strained; is that correct?**

20 A Yes.

21 Q **Does the level of fatigue vary depending on how much**  
22 **reading you do in a day?**

23 A Yes.

24 Q **Can you explain how it varies?**

25 A Well, the more reading I have to do, the greater the

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1                   eye strain, and also if things are not accessible to  
2                   me, then it creates greater eye strain for trying to  
3                   read materials that are not accessible to me.

4   Q   **No further questions.**

5                   MS. MASSEY: I just have a couple of  
6                   follow-up questions.

7                   - - - -

8                   EXAMINATION OF  
9                   NICOLE M. POSTON

10                  BY MS. MASSEY:

11   Q   **With respect to Plaintiff's Exhibit Number 2, and I'm**  
12                  **correct it contains a PowerPoint presentation and**  
13                  **other materials; is that correct?**

14   A   Yes.

15   Q   **Okay. Did you ask for a copy of the presentation and**  
16                  **the related documents in an accessible format**  
17                  **following this training?**

18   A   I addressed the concern with Mr. Fortner in the  
19                  follow-up e-mail that I sent him after that training.

20   Q   **Did you -- that's not my --**

21   A   Please rephrase, then.

22   Q   **I just asked a very simple question. Did you ask for**  
23                  **a copy of this document in an accessible format**  
24                  **following the training?**

25   A   I don't recall.

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1 Q Okay. And with respect to Plaintiff's Exhibit Number  
2 3, did you ask the administration for a copy of the  
3 PBIS handbook in an accessible format after it was  
4 handed out at the training?

5 A I did not, because I believe it was provided to us  
6 electronically after the meeting.

7 Q Okay. But you didn't ask for it to be provided to  
8 you in an accessible format afterwards, correct?

9 A Correct.

10 Q And with respect to Exhibit Number 1, you sent an  
11 e-mail to Mr. Fortner asking if you all could  
12 schedule a meeting to review your accommodations,  
13 correct?

14 A Yes, I asked for --

15 Q All right.

16 A -- an accommodation meeting.

17 Q Okay. But you did not specifically ask him to  
18 provide you with the documents in an accessible  
19 format in this e-mail, correct?

20 A No, I did not ask him in that e-mail to ask for the  
21 documents.

22 Q And just another question. You testified that -- and  
23 I don't want to get this wrong, but I think you said  
24 that 95 percent of the training you attended involved  
25 viewing more than one document at once, do you recall

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1                   **testifying to that?**

2   A       Yes.

3   Q       **If I got it wrong, please forgive me. During what**  
4                   **time frame are we talking about?**

5   A       January 2014 to present.

6   Q       **When you mean that you're required to view one or**  
7                   **more documents at once, what does that entail?**

8   A       It could mean that I am viewing a PowerPoint  
9                   presentation and also looking at a handout. It could  
10                  mean I'm looking at data in multiple graphs or charts  
11                  on multiple pages and comparing data. There's a  
12                  variety of ways.

13   Q       **Before January of 2014, were you required to view**  
14                  **more than one document at once during training?**

15   A       Yes.

16   Q       **What percentage of time between -- before 2014 were**  
17                  **you required to review more than one document at**  
18                  **once?**

19   A       Seventy-five percent.

20   Q       **And in each of those instances before January of**  
21                  **2014, were documents provided to you in an accessible**  
22                  **format?**

23   A       Yeah, yes.

24   Q       **In hard copy?**

25   A       Yes.

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1 Q Did you view any of the documents on a computer  
2 screen before January 2014?

3 A Not often.

4 Q I don't have any additional questions.

5 MS. WHITE: None here.

6 Q As I said before, I'll reserve the right to recall  
7 you as a witness.

8 Your attorney will instruct you on whether  
9 you're going to read the transcript or not.

10 MS. WHITE: We'd like to read.

11 - - - -

12 (Thereupon, the deposition was adjourned  
13 at 4:10 P.M.)

14 - - - -

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1 The State of Ohio, )

2 County of Cuyahoga. ) SS:

## CERTIFICATE

4 I, Mary Lou Mellinger, a Notary Public within  
and for the State aforesaid, duly commissioned  
5 and qualified, do hereby certify that the above-  
named NICOLE M. POSTON was by me, before the  
6 giving of her deposition, first duly sworn to  
testify the truth, the whole truth and nothing  
7 but the truth;

That the deposition as above set forth was reduced to writing by me by means of stenotypy, and was later transcribed upon a computer by me;

10 That the said deposition was taken in all  
11 respects pursuant to the stipulations of counsel  
herein contained; that the foregoing is the  
12 deposition given at said time and place by said  
NICOLE M. POSTON;

13 That I am not a relative or attorney of  
either party or otherwise interested in the  
14 event of this action.

15 IN WITNESS WHEREOF, I hereunto set my hand  
and seal of office, at Cleveland, Ohio this  
16 30th day of October, A.D. 2017.

17 Mary Lou Mellinger  
18

Mary Lou Mellinger, RPR and Notary Public  
19 within and for The State of Ohio  
330 Leader Building  
20 526 Superior Avenue  
Cleveland, Ohio 44114

22 My Commission expires August 9, 2019.

23

24

25

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2

ERRATA SHEET

3

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5 I declare under penalty of perjury that I have read the

6 foregoing \_\_\_\_\_ pages of my testimony, taken

7 on \_\_\_\_\_ (date) at

8 \_\_\_\_\_ (city), \_\_\_\_\_ (state),

9

10 and that the same is a true record of the testimony given

11 by me at the time and place herein

12 above set forth, with the following exceptions:

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ERRATA SHEET

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19 Date: \_\_\_\_\_

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Signature of Witness

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Print Name of Witness

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